

~~CONFIDENTIAL~~

ANNEX I

Povl Bang-Jensen
Lake Success, N.Y.

29 May 1958

Written Presentation to the Joint Appeals Board
of Appeal submitted by Letter of 10 May 1958

1. By reading the attached list of annexes, the Joint Appeals Board should be able to obtain a chronological resume of the facts behind this appeal. However, after studying that list, and the annexes themselves, the members of the Board might find with good reason that it is difficult to remember and keep clearly in mind the step by step developments, and might consequently well conclude that the case is very involved.
2. That it has become so is the result of the Administration's procedural manoeuvres and its consistently irregular handling of the case, since, on 4 December 1957, the Appellant was suspended without any charges being made against him, either orally or in writing, and escorted out of the United Nations premises by two guards.
3. However, the basic question at issue in this appeal is a very simple one: Whether a defendant is entitled to have access to the relevant material necessary for his defense and to the testimony and all documentary material on which grave charges against him are based.
4. The answer to this question is so obvious that this appeal would not have been necessary if the details of the case had not been kept secret. Otherwise public opinion, particularly all friends of the United Nations, would have demanded that the United Nations itself adhere to ordinary principles of justice and due process as expressed in the Universal Declaration on Human Rights.

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I. FAILURE TO MAKE DOCUMENTS AVAILABLE.

5. The first of the administrative decisions which the Appellant has appealed by his Letter of Appeal of 10 May 1958 (Annex, Ap. 35) is the Secretary-General's refusal or failure:

"to make available to the defendant and his counsel the relevant documents necessary for the preparation of the defendant's written answer to the charges against him for "grave misconduct", in particular the documents listed in the request to Mr. Cordier of 9 April, submitted in accordance with the explicit assurances of the Administration of 7 March".

6. The Secretary-General and his aides have not claimed that a single one of the Documents, listed in the request to Mr. Andrew Cordier of 9 April (Annex, Ap. 11), cannot be made available on account of the protection of secret material. There is, therefore, no legitimate reason why the requested documents were not made available at once, as Mr. McDiarmid, acting on the Secretary-General's behalf, by memorandum of 7 March had assured the Appellant that any relevant documents which he requested would be prior to the proceedings of the Disciplinary Committee (Ap.3).

7. Nor has the Secretary-General or his aides ever asserted, although they have been repeatedly asked if they did so, that any single item of the 87 listed in the request for documents of 9 April (Ap. 11) is not relevant to the case. The Administration has hinted that the documents might not be relevant, but has not claimed it outright, realizing that any unbiased reader of the list of requested documents would find that none of the items could, by any stretch of the imagination, be said not to be relevant.

8. Even if a few of the items were of doubtful relevancy, why should the Administration, since they are not secret, haggle over and delay making them available? Why did Mr. Cordier originally attempt to

maintain, though unsuccessfully, that it was he who had to decide whether the requested documents were necessary for the Appellant's defense? Why does the Administration still claim that it needs the advice of the Disciplinary Committee to make up its mind whether the requested documents are relevant?

9. What is the reason that the Administration, openly and behind the stage, attempts all kinds of procedural manoeuvres to avoid making the requested documents available?

10. Can there be any other credible answer than that the requested documents are much too relevant for the comfort of the Administration? This conclusion seems inescapable in view of the following:

(1) the Appellant charged in his request of 9 April that several of the documents referred to in the Administration's written presentation to the Disciplinary Committee, do not exist and have never existed. It would have been reasonable to expect, if the Appellant were in error about this, that the Administration would have moved promptly to disprove this serious accusation and have provided him with these documents. Mr. Cordier, however, has even refused to state whether these documents exist or not. (Ap. 34, 37, 38)

(2) the Appellant also charged in his request for documents that several of these documents, in fact, would prove to state something quite different from what they were quoted or reported as stating. Again one would expect that the Administration immediately would make the documents available to meet this serious allegation.

(3) the Appellant in his request of 9 April asked to receive the transcript of the testimony of the witnesses who are being used to support the charges; the right of a defendant to know

the witnesses and their testimony is generally recognized; in recent years, deviations from this principle have caused much public discussion and indignation. In the present case, the Defendant has charged that the Administration's presentation of the case against him in some instances reports the witnesses as having stated the opposite of what, according to his information, they actually testified. Still, the Administration refuses to produce the testimony, in clear violation of the Draft Convention on Human Rights, Article 13 (c).

(4) the Appellant has explained that, aside from other reasons, he needs the documents to disprove the charge that he repeatedly has made "groundless charges" against persons in the Secretariat. Why does the Secretary-General maintain that the Appellant has made groundless charges, and at the same time deny him access to the documents which will prove that the charges are not groundless? (Ap. 27 and 31)

 (5) the Appellant has pointed out that Mr. Cordier's failure to produce the requested documents might be partly due to the fact that several of them will prove very embarrassing to Mr. Cordier himself. One would think that Mr. Cordier, if this was not so, would be eager to make the documents available to eliminate any suspicion that he is withholding them to protect himself. (Ap. 18 para. 8 and 19)

(6) the Appellant has charged that the failure to provide him with the requested documents is an attempt to cover up serious irregularities on the part of high Secretariat officials in relation to the Special Committee on Hungary which the Appellant

many times has brought to the Secretary-General's personal attention since 4 June 1957, almost a year ago.

(a) the Administration at that time failed to ask for the evidence offered but, without explanation, dismissed the Appellant as Deputy-Secretary of the Committee on Hungary, on 26 August 1957;

(b) the Administration, thereafter, first refused even as much as to look at the evidence, again offered by the Appellant;

(c) the Administration later failed to investigate, or rather verify, the correctness of certain simple specified examples of irregularities with which the Appellant provided the Secretary-General on 20 September 1957;

(d) the Administration, thereupon, attempted a "whitewash" with the help of the Gross Committee, illegally constituted on 4 December;

(e) after having suspended the Appellant on 4 December, the Administration endeavored to ruin his reputation and destroy credibility in him by declaring that he was mentally unbalanced;

(f) the Administration finally claimed incorrectly that the Appellant had failed and even refused to provide it with evidence regarding the irregularities..

11. Confronted with the above six challenges, the Administration has not advanced one reason why it has refused, for now almost two months, to produce the documents, contrary to its own explicit assurances of 7 March and ordinary principles of due process.

12. To sum up the Administration's contentions, or lack of contentions:

(1) the Administration has not claimed that the documents are secret;

(2) the Administration has not claimed that even one of the documents is not relevant to the case;

(3) the Administration has refused even to state if there is any one of the requested documents about whose relevancy it is in doubt;

(4) the Administration has failed to state why it needs advice from the Disciplinary Committee to determine the relevancy. It has not explained:

(a) why it needs advice about what even a cursory reading of the request of 9 April will reveal as obvious;

(b) why the Disciplinary Committee has any special knowledge or qualifications superior to Mr. Cordier, the Office of Legal Affairs or the Office of Personnel to give advice about this;

(c) why the Administration, since Mr. Cordier, on 15 April, requested the advice of the Disciplinary Committee, headed by the highest ranking of Mr. Cordier's personal assistants, has waited so patiently for this advice which does not seem to be forthcoming.

(5) Mr. Cordier appears still to believe that it is for the Defendant to prove that the documents are "relevant", in spite of the facts:

(a) that under normal legal principles it would be the Administration which, since it is a question of non-secret documents, would have to prove that they are not relevant;

(b) that the Secretary-General himself has not maintained this, since, as the Appellant has pointed out, the Secretary-General, being a lawyer, is well aware of the demands of normal legal procedures; (Ap. 30)

(c) that the normal legal principle is both logical and essential: How should a defendant be able to prove the obvious (for instance, that this statement is typed on pieces of paper) to the satisfaction of a Public Prosecutor who denied recognition of the obvious?

(6) Mr. Cordier has given up his contention of 15 April

(Ap. 16) that the Defendant also had to show that each of

the requested documents is necessary for the preparation of

his defense, after which it was he, Mr. Cordier, with the advice of the Disciplinary Committee, who decided whether they actually were necessary, not the Defendant and his counsel. This would mean that the Prosecutor would decide how the accused should defend himself. Quite apart from the absurdity of this idea, it would in many cases clearly be impossible for the Defendant to know and prove how necessary the individual document was for his defense, until he had seen it.

13. It might not be unfair to conclude that the Administration's reference to the Disciplinary Committee for advice about what is obvious, i.e., the relevancy of the requested documents, constitutes an attempt:

- (1) to evade responsibility and to avoid public criticism, should the case reach the United Nations Tribunal;
- (2) to involve the Disciplinary Committee, in the hope that a negative decision of that Committee might not be considered appealable;
- (3) to make certain that any documents would be made available so late that they would be ineffectual for the preparation of the defense; (As will be noted, Ap. 15, the Disciplinary Committee on the same day, 15 April, it received Mr. Cordier's request to advise him which of the requested documents, if any, should be made available to Defendant for the preparation of his written answers to the charges against him, demanded to receive that answer not later than 21 April.)
- (4) to "railroad" the case through the Disciplinary Committee so that the Secretary-General could dismiss the Appellant from

the Secretariat, in the hope that the Appellant, when off the payroll, would not have the necessary financial means and the energy to carry the case through to the Appeals Board and the United Nations Tribunal, and then, as others before him, would be willing to accept an offer of termination indemnity plus three months salary. (The Administration has, in fact, already found its way indirectly to make such a proposal to the Appellant, although it is not permitted to pay him termination indemnity, since he is charged with "serious misconduct".)

14. The Secretary-General's refusal to give the Defendant access to the documents would be a grievous abuse and obstruction of justice under normal circumstances, but is aggravated in the present case by several factors:

- (1) the Secretary-General has twice refused to grant permission, as he is empowered to do, for the Appellant to use independent legal counsel and suggested to him, instead, to find a counsel among the staff, although it obviously was unlikely that any staff member would feel free to act as counsel, since this would bring him in conflict with several of the highest officials of the Secretariat;
- (2) the Secretary-General has failed (as the Appellant since 11 April three times has asked him to do, after a most unusual experience in connection with a staff member, who for two weeks assisted the Defendant for a limited purpose) to ask Mr. Cordier and his other aides not to have any discussions or negotiations about the case without the Appellant's knowledge

with any staff member who might be representing him;

(Ap. 13, para. 7; Ap. 25, para. 18; Ap. 30, para. 6 and 7)

(3) in reply to the request of the Appellant on 4 March 1958 (Ap. 2) that the Secretary-General "in the interest of justice and fair play" grant him "the right to have made available to me or my counsel such documents as may be necessary to the proper presentation of my defense", the Appellant was informed in writing on 7 March (Ap. 3):

"With respect to papers required for your preparation prior to the proceedings, you will of course as said in my memorandum of 19 February, have access to your files and your papers in your office in headquarters. Should any other particular document relevant to the charges be necessary to the preparation of your case, you should address a specific request to Mr. Cordier. He will, subject to necessary protection of secret material, make any such paper available to you and your counsel." (Emphasis added)

(4) the charge against the Appellant is that he has committed "serious misconduct", not merely "misconduct"; this means that he can be dismissed without pension. In fact, the charges even use the term "grave misconduct" and are of such a nature that they would fall within the criminal code of many

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(5) the charges are not even properly defined, but state that the Appellant has "committed grave misconduct in the following main respects....., for example,"; thus, it is not even completely clear against what the Appellant has to defend himself;

(6) the charges are based on the final "report" of 8 February 1958, consisting of 35 pages and some 70 annexes, which it took the illegally constituted Gross Committee two months to prepare after its so-called "investigations";

(7) the case is, in fact, many cases rolled into one; no case of similar size or character has ever been dealt with by the Disciplinary Committee; there appear to be 17 charges against the Appellant, apart from numerous others contained in the Gross Committee "report" which was submitted by the Administration to the Disciplinary Committee as its presentation of the case;

(8) the logic and nature of the charges in the Gross Committee "report" are indicated by the fact that it claims that the Secretary-General is entitled to dismiss the Appellant summarily, without pension, because of his conduct, while it also claims, without giving the slightest evidence, that the Appellant is mentally ill;

(9) the members of the Gross Committee have even spread in public the same innuendo regarding the sanity of the Appellant; besides, the final Gross "report" was not marked "Confidential" and leaked to the press before the Appellant had seen it himself; the Appellant, on the other hand, was instructed by the Administration to keep the "report" and the charges against him "Confidential", while the Secretary-General sent a copy of the "report" to the Appellant's Government without even informing him;

(10) the slanderous allegations regarding the mental health of the Appellant have also been made by other high United Nations officials, compromised by the case, in conversations with persons inside and outside the Secretariat, in an apparent attempt to cover up irregularities and to discourage any support for the Appellant on the side of the Secretariat staff, his

Government, the Delegations, the press and the public;

(11) in line with this campaign of vilification, the Appellant, on 4 December, was suspended and accompanied out of the United Nations premises by two guards; instructed not to tell his superiors, his subordinates or other colleagues, nor his own Delegation which was to dine at his home the next evening, why he was not coming to work. He was also instructed to stay away from the United Nations premises, thereby reducing the risk that his colleagues, the Delegates and the members of the press corps, with whom he normally had contact, would meet him and form their own opinion about the stories, placed in circulation, that he was mentally unbalanced, an alcoholic, a "psychopathic troublemaker", a McCarthyite, etc.;

(12) the final Gross "report" makes several incorrect statements which are contrary to the facts in its own annexes; it makes many other incorrect statements, allegedly based on documents which it does not include among its annexes;

(13) the some 70 annexes to the Gross "report" are partly prepared for the Committee under its direction, but are mostly handpicked from what Mr. Gross described as "a foot-and-a-half pile of documents" which the Committee had studied "very carefully", and these annexes have been misleadingly arranged to give apparent support to the charges against the Appellant;

(14) the final Gross "report" of 8 February 1958 and its annexes contain numerous allegations, usually without supporting evidence, which the Committee never had presented to the

Appellant and which were entirely new to him when, at his insistence, he received the final "report" on 19 February; (15) by advising the Secretary-General about what action to take against a staff member, the Gross Committee usurped the functions of the Joint Disciplinary Committee and the Joint Appeals Board and irreparably prejudiced the whole case; (Ap. 2)

(16) the final Gross "report" has been submitted to the Disciplinary Committee by the Secretary-General who thereby has indicated to the Committee what he desires it to advise him;

(17) this is the more serious since the Gross Committee was composed of persons of prominence: Mr. Constantin Stavropoulos, Under-Secretary for Legal Affairs, and Mr. Philippe de Seynes, Under-Secretary for Economic and Social Affairs, together with a so-called "independent outsider", Mr. Ernest A. Gross; though the latter acted in his professional capacity as a lawyer, for an unknown fee, the public was given the carefully cultivated impression that the United States Government, through Mr. Gross, was participating unofficially in the investigation; it was pointed out in United Nations press releases that Mr. Gross was a former Assistant Secretary of State and former Deputy Representative of the United States to the United Nations.

(18) the Gross groups, as the Committee originally was called, requested the Appellant to appear "to discuss the matter"; on 13 December 1957, asking him to bring "such documentation as you may consider relevant to help you in answering questions arising from the review"; the meaning of the term "relevant" was uncertain since the Appellant did not know the charges against him; besides, he did not have access to his documents in his office in the United Nations Building;

(19) during the meeting on 13 December, the Administration promised to produce certain essential, non-confidential documents; this assurance was repeated on 16 December, during the Appellant's second and only other "interview" with the Gross group; however, even now, nearly six months later, these documents have not been made available;

(20) the Appellant was permitted no counsel during the above mentioned two "interviews"; after he protested against meeting again without counsel and informed the Gross group that M. Adolf A. Berle, Jr. was his attorney, he was not invited to any more hearings. The Gross Committee thus did not see the Appellant after 16 December, although it continued its "investigations" until it submitted its final "report" on 8 February 1958;

(21) the transcript of his two hearings which the Appellant received only upon repeated requests after he had obtained legal counsel, proved in some cases to report the contrary of what he had said; many of his answers as transcribed were so garbled that they did not make sense; others were marked inaudible; altogether 231 of his answers were so incorrectly reported that the transcript was beyond correction;

(22) the Gross group, on Saturday, 21 December, suddenly turned itself into a "Committee to Investigate Mr. Bang-Jensen's Conduct" and released its "preliminary findings" to the press without notifying the Appellant, either before or afterward;

(23) the Gross Committee on 15 January 1958 released to the press another "interim report" of eight pages before it had been seen by either the Appellant or his counsel; (Mr. Berle, in fact, never had an opportunity to appear with the Appellant and only had informal conversations with members of the Gross Committee about the handling of the case, never about its substance.)

(24) although the Appellant and his counsel on 16 January pointed out that the interim Gross "report", released on the previous day to the press by the Secretary-General, contained several serious indisputable errors of facts and several allegations completely new to the Appellant, the Gross Committee refused to give the Appellant the opportunity to submit an answer though it did not present its final "report" to the Secretary-General until 8 February;

(25) despite the Appellant's protest of 16 January, and despite assurances by the Committee to Mr. Adolf Berle on the same day that no public action would be taken during Mr. Berle's six-day absence from continental United States, Mr. Gross nevertheless on Saturday afternoon, 18 January, held a press conference about the case, lasting one hour; during this conference he made additional incorrect statements and repeatedly insinuated that the Appellant was mentally deranged;

when asked by a journalist whether it was not libel when the "interim report" of 15 January referred to the "aberrant conduct" of the Appellant, Mr. Gross stated that he had checked in advance to make certain that this expression was not considered libelous by the United States courts; (26) moreover, notwithstanding the Appellant's protest regarding the accuracy of the "interim report", the Secretary-General on the same Saturday, 18 January, issued a public statement confirming the findings of the "report"; in this statement, he declared misleadingly that the five members of the Special Committee on Hungary all had agreed that the list of anonymous witnesses and pertaining papers should be burned, "considering the insecure manner in which these papers have been kept by Mr. Bang-Jensen". In fact, none of the members of the Committee had given any such reason for their concurrence in the recommendation that the papers should be destroyed, a solution proposed originally by the Chairman of the Committee on Hungary and by the Appellant.

15. To sum up:

- (1) it is a basic part of due process that the defendant is entitled to have access to the testimony and documentary material relevant to the charges preferred against him;
- (2) the Secretary-General has not claimed that even one of the requested documents is not relevant;
- (3) the Appellant has charged that some documents referred to in the presentment against him have never existed; that others state something different from what they are reported as stating, and that the failure to make the documents available is an attempt to cover up serious irregularities;

(4) in the face of these challenges, the Administration has not advanced a single specific reason why, for almost two months, it has refused to produce the documents as demanded by due process, reneging on its own explicit assurances of 7 March;

(5) the Administration's contention that it needs the advice of the Disciplinary Committee on the obvious question of relevancy is a patent attempt to evade responsibility and to prevent a timely testing of its refusal by the Joint Appeals Board and the United Nations Tribunal;

(6) the seriousness of the failure to produce the documents is compounded by numerous grave irregularities and abuses in the handling of the case as indicated, in no way exhaustively, in paragraph 14 above.

16. It is therefore respectfully requested:

that the Joint Appeals Board recommend to or advise the Secretary-General to make available to the Appellant without delay, subject to the protection of secret material, all such documents as the Appellant or his counsel might request as necessary for the proper preparation of the defense, unless it is obvious that a requested document is not relevant to the case; and specifically, that the Secretary-General make available the documents listed in the Appellant's request of 9 April.

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II. FAILURE TO ALLOW APPROPRIATE TIME FOR PREPARATION

17. The second administrative decision, or rather chain of decisions, is, as stated in the Letter of Appeal, the Secretary-General's refusal or failure

"To allow the defendant the necessary time to find a counsel among the staff and to allow that counsel the time needed to study the involved case and to assist in preparing the written answer".

18. This question clearly is closely connected with the question of the documents. As long as the essential documents have not been made available, the Appellant will not be able to prepare a proper answer to the charges against him.

A. Time needed for finding Legal Counsel

19. In cases of serious nature it is an implicit part of due process that the defendant must be granted reasonable time to find a counsel and the counsel given adequate time to study the case. When the Appellant, on 19 February 1958, received a copy of the final Gross "report" with annexes, Mr. Adolf A. Berle, Jr. advised him in view of the consistently irregular handling of the case, that he now needed as counsel a trial lawyer. With Mr. Berle's advise, the Appellant consulted Mr. J. Anthony Panuch, an international lawyer recognized as an expert in administrative and security matters, who for many years held high offices in the United States Government; he was, in fact, in charge of the administration and the reorganization of the Department of State at the time the United Nations was organized and its relations to the United States Government arranged.

20. Following the Secretary-General's rejection of the Appellant's first request of 4 March to be represented by independent legal counsel, the Appellant on 12 March submitted an "opinion" from Mr. Panuch as to the exceptional need for "adequate preparation and representation" in the unprecedented and involved case, irreparably prejudiced by the Gross Committee. (Ap. 4 and 5) On 21 March, the Appellant was informed, however, that the Secretary-General had rejected his request, after having sought advice from the Disciplinary Committee. (Ap. 6, 7 and 8)

21. For the limited purpose of obtaining permission to bring Mr. Panuch into the case, the Appellant had for two weeks the assistance of (Mr.-----), a staff member who was to retire and return to (-----) on 26 March. It proved unfortunately that Mr(-----) had carried out ~~negotiations~~ with high Secretariat officials about the case without the knowledge of the Appellant; after the Appellant had concluded his association with him shortly before Mr. (-----) scheduled return to (-----), Mr. (-----) prolonged his stay in New York for another two weeks, during which time he and the Administration continued to act as if Mr. (-----) were still representing the Appellant and had been representing him in general, not just for a limited purpose.

22. It is unnecessary to enter into detail regarding the flagrant abuses in this connection, except by referring to the annexes, in particular Ap. 5, para. 6; Ap. 9, para. 2; Ap. 13, para. 1-10. This unpleasant episode, however, has made it even more difficult to find a counsel amongst the staff, particularly since, as indicated above, the Secretary-General has failed, as requested, to ask Mr. Cordier and his other aides not to have discussions or negotiations without the Appellant's knowledge with any staff

member representing him.

23. Considering these incredible events and the fact that any staff member representing him would be placed in an embarrassing situation in relation to several of the highest officials in the Secretariat, the Appellant must conclude reluctantly by now that it is unlikely that he will find any qualified member of the staff who will feel free to handle the case. He will, therefore, no longer request time to find a counsel among the staff; on the other hand, the fact that he has no counsel must be taken into consideration and the time allowed him to prepare his answer adjusted accordingly.

B. Time needed for preparation of answer

24. Obviously there can be divergent opinions about how much time is needed to prepare an answer adequately after the relevant material is available. In the opinion of Mr. J. Anthony Panuch, two months of concentrated work would be needed to prepare the defense to a "massive all-out 'saturation' assault of this character" (Ap. 4), which it required the Administration two months to prepare with all the resources of the United Nations at its command and with the assistance of a specially engaged outside legal counsel, Mr. Ernest A. Gross.

25. The Appellant for his part is deprived of the help of legal counsel; by his suspension he is also deprived of the use of his office and has to work at home without secretarial assistance; he has only rarely received duplicates of the Administration's communications although several times he has requested this simple courtesy. Since 4 December, when he was suspended, he has had

only three or four Sundays free and has been working late almost every night; even so he has only been able to answer a fraction of his correspondence and has had little time for his family.

26. The Appellant's time has been fully occupied since he received the Gross "report" on 19 February:

- (1) first by seeking a counsel and then with the preparation of his procedural challenges and exceptions of 4 March (Ap. 2);
- (2) then by his endeavors to obtain permission to use independent counsel, which was rejected on 21 March;
- (3) then by his preparation of the detailed 19 pages request for documents of 9 April (Ap. 11);
- (4) that preparation was delayed by his futile efforts to find a counsel among the staff;
- (5) and further delayed by the need for urgent action to counteract the damage and confusion caused among his friends and the Danish representatives in the United States by the efforts of the Administration, through Mr. (X), to effect his "resignation";
- (6) since 9 April, as the annexes indicate, the Appellant has been fully occupied by defending himself against mounting abuses and irregularities in the handling of the case, particularly with his efforts to prevent the case from being "railroaded" through the Disciplinary Committee while he was appealing the refusal to give him access to the relevant documents.

27. How much time the Appellant will need after receiving the documents can be disputed; it will depend partly on what the documents reveal. But it cannot be disputed that it was quite improper when the Administration, through Mr. (X) (Ap. 10, 12, 13 and 14), sought to arrange that the question of the time to be allowed for the preparation before the proceedings of the Appellant's reply was transferred from the Director of Personnel to the Disciplinary Committee;

(1) the Administration was again trying to evade its responsibility and shift any possible criticism to the Disciplinary Committee;

(2) the Administration maintains that the Disciplinary Committee's failure to grant needed time is not appealable; such a claim is more plausible and less embarrassing than the contention that the Administration's own refusal cannot be appealed;

(3) the charges had not yet been properly referred to the Disciplinary Committee; under Staff Rule 110.1;

(4) the Disciplinary Committee had not even been properly constituted and convened by the Secretary-General, under Rule 110.5, but one of the members of the panel of Chairmen had stepped forward and convened the Committee;

(5) the Disciplinary Committee had not even held its first meeting to consider the charges;

(6) the Disciplinary Committee had pointed out that, under Staff Rule 110.5(a), it had as far as possible to conclude its functions in two weeks, and that "oral proceedings of any length are not to be expected and... they are not recorded;" (Ap. 7);

(7) although the defense before the Disciplinary Committee, therefore, depends almost entirely upon the initial written answer to the charges, and documents made available during the proceedings cannot be effectively used, the Committee nevertheless demanded on 15 April, the same day it had received Mr. Cordier's request to advise him if any of the requested documents should be made available to the Defendant, that the Defendant should submit his written answer to the charges against him not later than 21 April (Ap. 15; Appellant's reply Ap. 17);

(8) the Secretary-General maintained that it would be "inappropriate" for him to "intervene" in the proceedings of the Disciplinary Committee by joining the Defendant in asking the Committee to adjourn the case during the appeal regarding the documents (Appellant's request, Ap. 18; Administration's reply, Ap. 20);

(9) the Committee on the other hand, playing its role in this Alphonse-Gaston act, refused, without giving any reason, to ask the Secretary-General whether he agreed that the case should rest while the matter of the documents was being settled by the appeal (Appellant's request, Ap. 26, 32, 33; reply Ap. 36);

(10) to this date the Disciplinary Committee has not informed the Appellant whether, regardless of ordinary principles of due process, it is going ahead with the case despite the present appeal.

28. It is respectfully requested:

that the Joint Appeals Board recommend to or advise the Secretary-General that he allow the Appellant a reasonably appropriate time, after the documents requested on 9 April have been made available, to prepare his written answer to the charges against him, taking into account the size and complexity of the case and the Appellant's lack of counsel and normal secretarial help.

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III. FAILURE TO ASSURE FAIR AND COMPLETE PRESENTATION
OF THE CASE TO THE JOINT DISCIPLINARY COMMITTEE

29. The third administrative decision, or rather series of decisions, which is under appeal, is the Secretary-General's failure

"to employ one of the several measures available within the Secretary-General's competence to make certain that the case is not being dealt with by the Joint Disciplinary Committee, until the facts in the case are presented to the Committee in a clear, complete, fair and unprejudiced manner, without suppression of essential documents or testimony; and in particular that the case is not proceeding in the Joint Disciplinary Committee while the basic procedural question regarding the Administration's failure to make the relevant documents available to the Defendant is being dealt with by the present appeal."

30. It is a generally accepted principle, explicitly confirmed by statute in many countries, that a public prosecutor in presenting a case against a defendant is duty-bound to do so without suppression of documents and other evidence favoring the defendant. The prosecution is expected to adhere more strictly and more carefully to this principle if the defendant does not have legal counsel, if the case is very involved, if the documentation is selected out of material to which the defendant has no immediate access, and if the case is to be dealt with by summary procedures, not offering full opportunity for effective defense.

31. The Secretary-General and his aides are bound by the same principle when submitting a case to the Disciplinary Committee.

32. Considering the nature of the Committee's proceedings which, under Rule 110.5(a), normally have to take place within two weeks and are primarily based on the "original written presentation of the case together with brief statements and rebuttals", it is evident that the Administration, if it were not bound by the just-mentioned principles, could deluge the Disciplinary Committee (whose members have other fulltime responsibilities and thus little time to probe into the matter), with documents in apparent support of its charges, while suppressing all documents in favor of the defendant and simultaneously submitting an extensive written presentation of the case, drafted by an impressive-appearing committee which purported to present the facts after thorough investigation.

33. That actually is what the Administration has attempted in the present case.

34. It is, however, incumbent upon the Secretary-General, under due process, to make certain that no case is referred to the

Disciplinary Committee until it can be submitted in a complete, fair and clear manner, and to take steps to withdraw it until it is properly prepared, if he discovers that a case has been submitted in an unprepared and prejudicial form without all pertinent facts and documents.

35. The Disciplinary Committee has little opportunity to seek out the facts itself, considering the limited scope of its proceedings. Its function is primarily to advise the Secretary-General of the disciplinary consequences of facts already known. The facts should, therefore, as far as possible, be established before a case is referred to the Committee. It is the responsibility of the Administration to find out in advance on which points agreement and disagreement exist with regard to the basic facts, and when it submits the case, make it clear what each side claims if there is any disagreement about facts.

36. It appeared from Mr. McDiarmid's memorandum of 19 February (Ap. 1, para. 4 and 5) that perhaps originally consideration was given to providing the Appellant with an opportunity to answer the Gross "report" before the case was submitted to the Disciplinary Committee and the Committee convened by the Secretary-General; the Appellant was requested by that memorandum to deliver his answer to Mr. McDiarmid's office and to apply to him if he needed more time for the preparation of his answer.

37. Whatever the original intention was, the Administration later, in April, maintained that the Disciplinary Committee already had taken over the proceedings of the case, and that the Secretary-General could not interfere with these proceedings, although the Committee had not even held its first meeting to consider the case. (Memorandum of 21 April, Ap. 20; Appellant's reply, Ap. 25)

38. All this took place although the Secretary-General could not be unaware:

- (1) that the Gross Committee had had only two "interviews" with the Appellant and those at the early stages of its work;
- (2) that the Appellant, contrary to the impression given to the public, had been deprived of the effective use of legal counsel before the Gross Committee;
- (3) that several statements in the Gross "report" are in conflict with facts well known to the Secretary-General personally;
- (4) that very decisive facts in the Appellant's favor, known to the Secretary-General, had been suppressed in the "report";
- (5) that the Gross "report" altogether was a most unusual, partisan and defamatory document; to quote Mr. J. Anthony Panuch:

"In my long years of Government service in responsible positions in the United States Government, I have never seen anything to approach the Gross Committee 'report' as a scurrilous and cowardly attack of one official of an international agency by his supposedly reputable colleagues, aided and abetted by an outsider, under the protection accorded them by Privileges and Immunities Act." (Ap. 9)

- (6) that the Appellant and his counsel, Mr. Adolf A. Berle, Jr., had protested that the eight-page "interim report" of the Gross Committee, made public on 15 January, contained several indisputable errors of fact and several allegations new to the Appellant;
- (7) that the Appellant had not been allowed to give an answer to the "interim report" of 15 January before the final Gross "report" was drafted.

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39. In view of the above facts, all known to the Secretary-General, it was his duty to hear the Appellant's side of the story before he utilized the "report" as basis for charges submitted to the Disciplinary Committee.

40. The Secretary-General cannot maintain that it is no longer in his power to correct this irregularity because he is not entitled to interfere with the Disciplinary Committee.

Such a contention is inadmissible since:

- (1) the case has not yet been formally referred to the Disciplinary Committee by the Secretary-General under Rule 110.1, and the Committee has not been convened by the Secretary-General, under Rule 110.5(a);
- (2) the Secretary-General at any time can join the Defendant in requesting that the Disciplinary Committee rest the case until it is properly prepared;
- (3) the Secretary-General is competent, at least if the Defendant agrees to this, to withdraw a case permanently or temporarily, from the Disciplinary Committee.

41. In view of the foregoing, it is respectfully requested:

that the Joint Appeals Board recommend to or advise the Secretary-General to take effective measures to assure that the case against the Appellant is not being dealt with by the Joint Disciplinary Committee until it has been prepared properly by the Administration so that it can be presented in a complete and unprejudiced manner, as far as possible, with all essential facts established and without suppression of essential documents and testimony.

Respectfully submitted:

29 May 1958

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Povl Bang-Jensen

LIST OF ANNEXES (i.e. to ANNEX I)

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to Bang-Jensen's Appeal to the Joint Appeals Board,
initiated on 19 April 1958

Note: To avoid confusion with the designation of the some 70 annexes to the final Gross "report" and with the documents requested by Bang-Jensen on 9 April 1958, the annexes to the present appeal are designated: Ap.1, Ap.2, Ap.3, etc. ~~X~~

The first document among the annexes would naturally be the communication, or communications, by which the Secretary-General, in accordance with Staff Rule 110.1 and 110.3(b), referred the case to the Joint Disciplinary Committee for advice, and, after having selected the Chairman from the panel provided for under Rule 110.2(a) (i), convened the Committee, as presumed under Rule 110.5. ~~X~~

It appears, however, from a letter from the Secretary of the Joint Disciplinary Committee of 12 May (Ap.36), that no such communications exist; ~~X~~

that the case has been referred to the Joint Disciplinary Committee merely by Mr. McDiarmid providing his Administrative Assistant, who is also Secretary of the Joint Disciplinary Committee, with a copy of a memorandum with annexes from Mr. McDiarmid to Bang-Jensen, (Ap.1), informing him that certain so-called charges for "grave misconduct", would be submitted to the Joint Disciplinary Committee, and that a meeting of the Committee would be called after Bang-Jensen has delivered his reply to the charges to Mr. McDiarmid;

that the Joint Disciplinary Committee has not been formally convened by the Secretary-General, but that one of the persons on the panel, from which the Chairman under Rule 110.2(a) (i) is to be selected (who is the highest ranking assistant to Mr. Andrew Cordier, who is seriously compromised by the case), has stepped forward from the panel, and has convened a committee.

- Ap.1, 19 Feb. 1958 Memorandum from Mr. McDiarmid to Bang-Jensen, forwarding the final Gross "report" of 8 February with annexes, and informing him that a copy of the "report" with annexes was being sent to the Secretary of the Joint Disciplinary Committee, and that so-called charges would be submitted to the Committee to the effect that he had "committed grave misconduct in the following main respects: ... for example..." (emphasis added) ~~X~~
- Ap.2, 4 March Preliminary procedural reply submitted to the Secretary-General by Bang-Jensen, protesting and making jurisdictional and due process challenges to the so-called charges and the Gross "report" with annexes, and inter alia requesting the right to be represented by independent legal counsel, and the right to have made available the documents necessary for the proper presentation of his defense. ~~X~~
- Ap.3, 7 March Mr. McDiarmid's reply on behalf of the Secretary-General to Bang-Jensen's requests of 4 March, refusing the use of independent legal counsel, but assuring him that the documents "required for your preparation prior to the proceedings" will be made available by Mr. Andrew Cordier upon specific request, "subject to necessary protection of secret material". ~~X~~

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- Ap.4, 11 March Legal Opinion from Mr. J. Anthony Panuch, regarding the need for adequate preparation and adequate representation in the involved case, which has been "prejudged and prejudiced" by the Gross Committee, appointed in circumvention of the Staff Regulations and Staff Rules. X
- Ap.5, 12 March Memorandum to the Secretary-General from Bang-Jensen, forwarding Mr. Panuch's Opinion (Ap.4), and requesting that the Secretary-General, pursuant to Rule 112.2(b), permit him, as an exception in the unusual and unprecedented case, to be represented by independent legal counsel, and pointing out that a staff member representing him would be placed in a most embarrassing position in relation to high Secretariat officials. X
- Ap.6, 18 March Memorandum from Mr. McDiarmid, informing Bang-Jensen that the Secretary-General has referred his application (Ap.5) to the Joint Disciplinary Committee for advice. X
- Ap.7, 20 March Letter from the Joint Disciplinary Committee to the Secretary-General, stating that it cannot recommend that he grant Bang-Jensen's request, and describing the Committee's limited functions and summary manner of proceedings, under the Committee's understanding of the Staff Rules. X
- Ap.8, 21 March Letter from Mr. McDiarmid, informing Bang-Jensen that the Secretary-General has refused his request to use independent legal counsel. X
- Ap.9, 27 March Letter from Mr. J. Anthony Panuch to Mr. (X) indicating, in paragraph 2, that Mr. (X) is no longer representing Bang-Jensen. X
- Ap.10, 3 April Letter from Mr. (X), unauthorized by Bang-Jensen, to the Joint Disciplinary Committee, requesting a stay. X
- Ap.11, 9 April Memorandum to Mr. Andrew Cordier, from Bang-Jensen, pursuant to the above assurance of 7 March, requesting certain specified listed documents, necessary for the preparation of Bang-Jensen's case before the Joint Disciplinary Committee. (Copy was, on the same day, forwarded to the Secretary of the Joint Disciplinary Committee for the information of the members.) X
- Ap.12, 9 April Letter from the Secretary of the Joint Disciplinary Committee to Mr. Bang-Jensen, in reply to Mr. (X) unauthorized letter (Ap. 10), informing him that "the Committee proposes to hold its first meeting in executive session on 24 April 1958 to consider the charges preferred against you. Any written rebuttal you may wish to submit should, therefore, reach me not later than 21 April 1958." X
- Ap.13, 11 April Memorandum to the Secretary-General from Bang-Jensen, taking exception to new violations of due process and requesting protection against further denial of fundamental human rights; inter alia asking that the Secretary-General ask Mr. Cordier to make the requested documents available as speedily as possible, so that Bang-Jensen can begin to draft the reply to the charges against him; X

further submitting that it is incumbent upon the Secretary-General to allow a staff member and his staff counsel the time needed to study and prepare a case, and also to make certain that the documentary facts in a case are gathered together in a clear form before it is dealt with by the Joint Disciplinary Committee, the more so since the proceedings of the Committee are normally of a summary nature. X

Ap.14, 11 April Note to the Secretary of the Joint Disciplinary Committee from Bang-Jensen forwarding copy of above memorandum of 11 April for the information of the members of the Committee, and informing him that Mr. (X's) letter of 3 April (Ap.10) was sent to the Joint Disciplinary Committee contrary to Mr. Bang-Jensen's instructions. X

Ap.15, 15 April Letter from the Secretary of the Joint Disciplinary Committee to Bang-Jensen, acknowledging receipt of copy of Bang-Jensen's request of 9 April for documents, but stating that the Committee still will "hold its first meeting in executive session on 24 April" and that Bang-Jensen's "written rebuttal" should reach the Secretary of the Committee, not later than 21 April. X

Ap.16, 15 April Memorandum from Mr. Cordier to Bang-Jensen, that he has referred Bang-Jensen's request of 9 April, for documents necessary for the preparation of his case, to the Joint Disciplinary Committee and requested that it, after considering "the relevance and necessity of the material" advise him "as to which documents, if any, should be made available..." X

Ap.17, 17 April Letter to the Secretary of the Joint Disciplinary Committee from Mr. Bang-Jensen, calling to their attention that it would be physically impossible to submit his reply on 21 April to the charges against him, because, among other reasons, Mr. Cordier has failed to make the documents necessary for the preparation of the reply available, in spite of the explicit assurances of 7 March and in spite of the demands of ordinary principles of justice and due process. X

Ap.18, 19 April Memorandum to the Secretary-General from Mr. Bang-Jensen, appealing for the Secretary-General's personal protection against violations of due process and fundamental human rights, and taking the first step in appeal to the Joint Appeals Board of various administrative decisions, requesting the Secretary-General, as required under Rule 111.3(a), to review these decisions and

(1) to advise Mr. Cordier to make the documents necessary for the preparation of Bang-Jensen's written answer available;

(2) to allow Bang-Jensen the necessary time to find a counsel among the staff and that counsel the time needed to study the involved case and assist in preparing the answer; X

(3) to take measures to make certain that the case is not being dealt with by the Joint Disciplinary Committee, until the documentary facts in the case are gathered and presented in a clear and fair manner.

- Ap.19, 19 April Letter to the Secretary of the Joint Disciplinary Committee from Bang Jensen, informing the members of the Committee of his appeal to the Joint Appeals Board of the Administration's decisions.
- Ap.20, 21 April Memorandum from Mr. McDiarmid to Bang-Jensen, stating that the question of "the relevance of documentation to the charges" has been referred for guidance to the Joint Disciplinary Committee "in the interests of orderly procedure" and "for the protection of your interests" (sic), and further stating that "the Secretary-General considers that it would not only be inappropriate but also inconsistent with the Staff Rules and Regulations for him to intervene in or countermand any decision by the Committee relating to the conduct of its proceedings".
- Ap.21, 22 April Memorandum from the Secretary of the Joint Disciplinary Committee to Mr. McDiarmid, requesting (a) Transcript of Mr. Alsing Andersen's testimony "of 18 December 1957", and (b) Document A/AC.88/CR.10. (The Committee has, so far, failed to explain from where it had learnt of the date and why it has not requested Mr. Andersen's testimony on other dates).
- Ap.22, 25 April Covering note from Mr. McDiarmid to Bang-Jensen, forwarding copy of the two documents requested by the Joint Disciplinary Committee on 22 April (the documents are not included here).
- Ap.23, 24 April. Letter, postmarked 25 April and received 26 April, from the Secretary of the Joint Disciplinary Committee to Bang-Jensen, acknowledging receipt of letter of 19 April (Ap.18), enclosing "a copy of your letter addressed to the Secretary-General under Rule 111.3(a)", i.e., Bang-Jensen's appeal, but informing him that the Joint Disciplinary Committee, nevertheless, "is proceeding with the examination of your case in accordance with the Staff Regulations and Rules" (sic).
- Ap.24, 25 April. Letter from the Secretary of the Joint Disciplinary Committee, inter alia informing Bang-Jensen that "the Committee met yesterday in executive session" and "began consideration of the charges preferred against you", and that the Committee will meet again on 2 May "by which day it hopes that your reply will be in its hands".
- Ap.25, 28 April Memorandum to the Secretary-General from Bang-Jensen, calling his memoranda of 11 and 19 April (Ap. 13 and 18) to his personal attention; requesting his reply, under Rule 111.3(a), to his "request for review" of 19 April, and pointing out

that the Joint Disciplinary Committee had not even held its first meeting, when Mr. McDiarmid maintained that the Secretary-General could not grant a stay to Bang-Jensen or ask the Committee not to begin to consider the case;

that the Secretary-General can make exceptions from the Staff Rules, when agreed to by the staff member directly affected;

that no party in a case, or a public prosecutor, can be accused of interfering with the court either because he joins the other party, or the accused, in asking for a stay, or decides himself to ask for a stay because he has found out that his assistants have submitted the case in an unprepared or even prejudicial and one-sided manner.

Ap.26, 30 April Letter to the Secretary of the Joint Disciplinary Committee from Bang-Jensen,

protesting against the Committee's violation of due process and of the most ordinary principles of fair play, by commencing its proceedings in spite of Mr. Bang-Jensen's appeal to the Joint Appeals Board of the basic procedural issue of his access to the relevant documents;

submitting that it is the duty of the Joint Disciplinary Committee to remand a case to the Director of Personnel if it is presented in a prejudicial, confused, unprepared or incomplete form, so that it will not be possible for the Committee, within the limited procedural framework by which it considers itself bound, to form a valid opinion of the true facts in the case;

requesting that the Joint Disciplinary Committee inquire whether the Secretary-General has any objections against the case being kept resting in the Joint Disciplinary Committee, while the appeal is being decided;

pointing out that during the appeal, it will not be possible for Mr. Bang-Jensen, in order not to prejudice his position, to discuss matters of substance with the Joint Disciplinary Committee;

observing with interest that the Joint Disciplinary Committee apparently agrees, that the question is only whether the requested documents are relevant to the charges, and that Bang-Jensen and his counsel decide themselves whether they are necessary for his defense;

calling to attention that there is not one of the 87 items listed in his request of 9 April which by any stretch of the imagination could be said not to be relevant.

Ap.27, 1 May

Memorandum from the Secretary-General to Bang-Jensen, stating that Mr. McDiarmid will "reply to the procedural points which require an answer", and urging Mr. Bang-Jensen to reply to the charges against him and to support the allegations Bang-Jensen has made.

- Ap.28, 1 May Memorandum from Mr. McDiarmid to Bang-Jensen stating that "neither the Secretary-General, nor Mr. Cordier, nor I have taken any final decision on the relevancy" of the documents, and that the "reference to the Joint Disciplinary Committee for its advice on relevancy of documents, and the question of procedure which you have raised do not constitute appealable decisions".
- Ap.29, 2 May Letter from the Secretary of the Joint Disciplinary Committee to Bang-Jensen, informing him that the Committee had met the same day. The letter fails to acknowledge his protest or explain why the Committee does not accept the protest, except for "noting" that Mr. McDiarmid has stated that "the questions of procedure which you have raised do not constitute appealable decisions". The Committee, inter alia, declares that "it must envisage the possibility of having to draft its report to the Secretary-General on the basis of the documents in its possession".
- Ap.30, 5 May Memorandum to Mr. McDiarmid from Bang-Jensen, pointing out that the two weeks' time-limit, under Rule 111.3(a), has now expired, and containing
- notification that Bang-Jensen, under Rule 111.3(b), is taking the second step in appeal to the Joint Appeals Board;
- detailed legal reasons why the questions are appealable, and why the Administration cannot circumvent the Staff Rules by asking unneeded "advice" from the Joint Disciplinary Committee;
- pointing out that the Secretary-General agrees, like the members of the Joint Disciplinary Committee, but unlike Mr. Cordier, that it is only the relevancy on which the question of the availability of the documents depends, that the Secretary-General, being a lawyer, no doubt will agree that it is the Administration, which has the burden of the proof that the documents are not relevant.
- Ap.31, 5 May Reply to the Secretary-General from Bang-Jensen, stating that he presumes that the Secretary-General, since he is urging Bang-Jensen to support the allegations he has made, now will ask Mr. Cordier to make the requested documents available "without further haggling and delay", and pointing out that since the documents are not secret, there is no legitimate reason they should not be made available immediately, and that Mr. Cordier's continued refusal and procedural manoeuvres constitute an attempt to cover up unpleasant facts and to obstruct justice.
- Ap.32, 5 May Letter to the Secretary of the Joint Disciplinary Committee from Bang-Jensen, forwarding copies of the above two memoranda of 5 May, expressing surprise that the Committee unquestioningly accept Mr. McDiarmid's contention that certain "administrative decisions" are not appealable, and again requesting an answer to two concrete questions in his letter to the Committee of 30 April.

Ap.33, 6 May

Letter to the Secretary of the Joint Disciplinary Committee from Bang-Jensen, asking certain questions of importance for the formulation of the supporting statement for his appeal, and requesting copies of following four essential documents, related to the procedures in the Joint Disciplinary Committee: 

- (1) The communication submitting the charges to the Joint Disciplinary Committee;
- (2) The Administration's "original written presentation of the case", insofar as any such exists apart from the Gross report;
- (3) The communication by which the Administration convened the Committee to its first meeting on 24 April, in accordance with Rule 110.5(a);
- (4) The documentary authority from the Administration, under which the Committee appears to have met on, or shortly before, 9 April and to have taken decisions before it actually had been convened by the Administration.

Ap.34, 8 May

Letter to Mr. Andrew Cordier from Bang-Jensen, asking Mr. Cordier, now that he has had a month to consider the matter and ask for advice, if needed, to state, in order to speed up the case, whether there are any of the documents listed in the request of 9 April (Ap.11) 

- (1) which cannot be made available, owing to "the necessary protection of secret material";
- (2) which Mr. Cordier claims are not relevant to the case;
- (3) about which he entertains doubt whether they are relevant to the case;
- (4) which do not exist.

In connection with (4), it is pointed out in the letter that there is reason to believe that several of the documents referred to in the Gross report and its annexes do not exist and have never existed. 

Ap.35, 10 May

Letter to Mr. A. Hatami, Secretary of the Joint Appeals Board, submitting the appeal, under Rule 111.3(b), and at the same time requesting him as Secretary of the Joint Disciplinary Committee to arrange for replies to the questions in Bang-Jensen's letters of 30 April and 5 May (Ap.26 and .32). 

Ap.36, 12 May

Reply to above letters (Ap.26 and .32) from the Secretary of the Joint Disciplinary Committee from which it appears (see also introduction to the present list of annexes) 

that the case was never submitted to the Joint Disciplinary Committee in a formal manner;

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that the Joint Disciplinary Committee was never formally convened by the Secretary-General to consider the case, after selection of a Chairman from the provided panel; ~~X~~

that no "original written presentation of the case" has been submitted by the Administration to the Joint Disciplinary Committee, apart from the final Gross "report" and a copy of Mr. McDiarmid's memorandum to Bang-Jensen of 19 February (Ap.1); ~~X~~

that the Joint Disciplinary Committee is refusing, as requested by Bang-Jensen on 30 April (Ap.26), to ask the Secretary-General whether he has any objections to the case being kept resting in the Disciplinary Committee, while the present appeal is being decided. ~~X~~

Ap.37, 15 May Note from Mr. Cordier to Bang-Jensen, failing to answer Bang-Jensen's four questions to him of 8 May (Ap.34), and maintaining that he needs the advice of the Joint Disciplinary Committee. ~~X~~

Ap.38, 17 May Note to Mr. Cordier from Bang-Jensen, pointing out that the Joint Disciplinary Committee, in view of the very nature of the four questions to Mr. Cordier in the memorandum of 8 May (Ap.34), could not possibly advise Mr. Cordier about how to answer these. ~~X~~

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Lake Success, N.Y.

ANNEX II

7 June 1958

TO: The members of the Disciplinary Committee
FROM: Povl Bang-Jensen

SUBJECT: Protest against the Committee's secret and illegal proceedings

I. The following chronology, revealing in itself, is presented in support of my protest:

- 19 April The Committee was notified that I had appealed the Secretary-General's denial of due process by failing to give me access to the documents necessary for my defense and offer me proper time for preparation prior to the proceedings in the Disciplinary Committee;
- 24 April The Committee commenced its proceedings in spite of my appeal and held, to quote it, "its first meeting in executive session on 24 April 1958 for consideration of the charges preferred against you";
- 30 April In a memorandum to the Committee, I protested against this flagrant violation of due process;
- 2 May In a communication from the Committee, it ignored my protest, without giving any reason why it believed that it was entitled to proceed;
- 5 May Having failed to receive any explanation from the Committee, I sent the Committee detailed explanation why it would be improper to go ahead while my appeal to the Appeals Board, and if necessary to the Tribunal, was pending;
- 6 May I requested in a memorandum copies of the documents by which the Secretary-General in accordance with the Staff Rules had convened the Committee and seized it of the matter;
- 12 May In a letter to me, referring to my communications of 5 and 6 May, the Committee did in no way indicate that it had not accepted my protest;
- same day Neither did the Secretary of the Committee, with whom I, on his initiative, had a two-hour conversation on the same day, in any way indicate that the Committee had not accepted my protest; on the contrary, he did not protest when I stated that it would have been illegal for the Committee to go ahead during the appeal;
- 17 May I pointed out that the above communication from the Committee proved that it had not even been properly convened and seized of the matter, and stated that, aside from this, "it would be totally illegal and amount to a travesty of justice" if the Committee went ahead during the appeal;
- 26 May In a memorandum to the Committee of this date, I stated that since I had received no reply to my letter of 17 May, "I must

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Date of Declassification Indefinite 2011/07/26

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assume that the Committee, honoring normal principles of due process, has agreed to rest the case while the question of the documents and other questions are being decided by my appeal;" at the same time, I mentioned the possibility that the appeal might have to be continued to the United Nations Tribunal;

27 May I handed the above memorandum to the Secretary of the Committee, who made no comments after having read it;

same day The Secretary-General's representative, Mr. Green, told me orally that the case "of course" had to rest in the Disciplinary Committee during the appeal, and that the Administration realized that I would carry the appeal on to the Tribunal, if necessary;

29 May The Disciplinary Committee was informed by the Secretary-General that the Appeals Board, misunderstanding what actually was being appealed, had declared that it was not competent to consider the appeal;

3 June Five days later, at noon, I was informed by the Administration of the decision of the Appeals Board, until then unknown to me;

same day At 4 p.m., the Committee received a memorandum from me, stating that I was taking the appeal to the Tribunal, and at the same time requesting copies of documents before the Committee which were still unknown to me; I delivered the letter to the office of the Secretary who apparently saw no reason to inform me that the Committee had been going ahead with the case and would report to the Secretary-General in two days;

5 June During the morning, I met two of the members of the Committee in the Secretariat building; they did not inform me that they were going to report the same day;

same day at 2 p.m., I delivered to the Secretary's office, for the information of the members of the Committee, my 27-page statement to the Appeals Board of 29 May;

6 June I received a memorandum, dated the previous date, from the Disciplinary Committee, forwarding copies of some of the documents before it, I had not yet seen; the communication did not indicate that the Committee had been going ahead in secret and was reporting to the Secretary-General on the same day, without considering, or even acknowledging, my 27-page statement;

same day at 8:40 in the evening, I received by messenger a memorandum from the Secretary-General, forwarding a so-called "report" from the Disciplinary Committee of 5 June.

2. Thus for one month, the Committee had deviously attempted to confirm the impression that it was resting the case, while in fact, it was proceeding in secret. Even so, it stated in its "report" with regard to some of the charges, that it must consider them true since I have failed to reply.

3. This travesty of justice is carried out by a Disciplinary Committee consisting of the following:

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Chairman: Mr. Meurig Evans, the highest ranking assistant to Mr. Andrew Cordier who, as the requested documents will prove, is deeply involved in and compromised by the case;

Mr. Charles Coates and Mr. Jean-Pierre Martin, Executive Officer and personal assistant, respectively, to Mr. Philippe de Seynes, co-signer of the final Gross "report" and, as the requested documents will prove, compromised by the case.

4. Mr. Charles Coates, in fact, has personal knowledge that the charges against me are false. During the fall of 1957, I had several extended conversations with him. In October, I asked his advice about what to do since I had received no reply to the following repeated inquiry to the Secretary-General:

~~X~~
"In the meantime, I am in serious doubt about my duties as an international official. Sabotage has been carried out, allegedly on your instructions. You have failed to consider my evidence. Am I now expected forget this matter? If not, to whom am I to turn?"

(a) Mr. Coates' advice at that time was that I was not obliged nor entitled to do anything; he told me that in his opinion, even if the Secretary-General had murdered his mother, he would not feel free to report it without the Secretary General's permission. Since the Secretary-General had failed to answer my repeated request for advice, I was obliged, Mr. Coates felt, to forget the whole matter.

(b) On 7 February 1958, I met Mr. Coates outside the United Nations. He suggested then that I should rather resign because I could not win anyhow. When I replied that, in order to vindicate myself, I was forced to take the case through the Disciplinary Committee and, if necessary, through the Appeals Board and the Tribunal, he told me that even so I would not have a chance because "the whole machine" was organized against me.

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NOT TO BE USED FOR PUBLICATION EARLIER THAN SUNDAY JULY 20, 1958, at 6 p.m. E.D.T. 1 X

On July 10, 1958 Mr. Povl Bang-Jensen sent the following cable to Secretary-General Dag Hammarskjold: X

"Your release yesterday of your 19-page letter of dismissal, stating your case against me, has presented me with a dilemma.

In spite of my urgent request, you refused to release simultaneously my side of the case as preliminarily presented in my memorandum of June 14. As you know, I have made every effort to have the case dealt with in as quiet and as orderly a manner as possible in order not to hurt the United Nations which, in the final analysis, is more important than any of the individuals involved.

I have never released any material involving this case to the press. I have felt that the case should be thoroughly investigated and adjudged not in public, but within the framework of the United Nations.

Unfortunately my efforts in this direction have been in vain. I again urge you to make my June 14 memorandum, with annexes, public, with such deletions as you may consider necessary to protect the United Nations and to avoid harming any person unnecessarily."

This request was refused; Mr. Hammarskjold stated, however, that Mr. Bang-Jensen was free to publish the memorandum himself. X

In view of the untruthful accusations made public by Mr. Hammarskjold, Mr. Bang-Jensen is now compelled to release the attached memorandum to Mr. Hammarskjold of June 14 with annexes; for security reasons and to avoid undue harm to individuals, a few deletions have been made. X

As indicated in paragraph 28 of the memorandum, this presents only a part of the many facts regarding the serious irregularities against the Special Committee on Hungary. Mr. Bang-Jensen is prepared to present all facts when a proper investigation is undertaken. X

It will be noted that Mr. Hammarskjold in his letter of dismissal of July 3 has not even attempted to repudiate the statements made in Mr. Bang-Jensen's memorandum of June 14, and in general has not disputed the facts as stated in that memorandum and its annexes. Mr. Hammarskjold, in effect, has ignored it, as he has ignored the two letters from the International League for the Rights of Man of April 8 and June 18, 1958. X

Nor has Mr. Hammarskjold in any manner responded to the various questions and requests in Mr. Bang-Jensen's memorandum of June 14; in this connection attention is called to paragraphs 7, 12-15, 16-18, 22, 26-27, 38, 54, 58, 64-65, 68-69, 74, 104, 108, and 110. There has been no response either to paragraphs 9-11 in Mr. Bang-Jensen's memorandum of 29 May, 1958 (Annex I). X

Classified by 1259
Exempt from GDS, Category 3
Date of Declassification Indefinite 10/16/78

~~CONFIDENTIAL~~

DECLASSIFIED BY SP3 BTJ/DES
ON 09/27/00
918,378

TO: Mr. Dag Hammarskjold, Secretary-General

FROM: Povl Bang-Jensen

SUBJECT: Reminder to the Secretary-General, that the examples of sabotage against the Special Committee on Hungary, presented to the Secretary-General in numerous memoranda since 4 June, last year, still have not been investigated;

Presentation of additional examples and evidence;

Indication of willingness to present still further examples and evidence;

Vigorous protest against the Secretary-General's announced intention to take disciplinary action, although the Disciplinary Committee has not even gone through the semblance of proper proceedings, and despite the Appeal pending before the United Nations Tribunal against the Secretary-General's denial of access to the testimony and documents necessary for the defense.

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INTRODUCTORY REMARKS

1. On 7 June, I once more requested "that you instruct Mr. Cordier to make available without delay, the testimony and documents requested on 9 April, in accordance with ordinary principles of justice and fair play and the explicit written assurances given me on your behalf, on 7 March."
2. In your communication of 11 June, you once more refused to make the testimony and the documents available to me, while you persisted in demanding my answer to the many serious charges against me no later than Monday, 16 June.
3. In the circumstances, it is obviously impossible for me to answer all the numerous charges against me, since you have refused me access to the testimony and most of the documents on which the charges are based.
4. The present statement, therefore, does not constitute such a reply, although in fact it might make clear to any dispassionate reader the framed-up nature of the charges against me.
5. As to the so-called "report" of the Disciplinary Committee, which recommends to you my dismissal for misconduct, it is sufficient here to remark that you yourself have a first-hand acquaintance with much information withheld from the Gross Committee and its rubber stamp, the Disciplinary Committee, and that you personally know that the charges against me are not true. Nor can you be unaware that the "reports" of these two bodies contain many statements which are in conflict with facts known to you.

I. THE SECRET LIST OF ANONYMOUS WITNESSES

A. The charge that promises were given to the witnesses
"in excess of your authority"

6. It is difficult to understand how anybody can determine whether this charge is true, without knowing what I was authorized to promise the witnesses who testified before the Special Committee on Hungary and what you claim in this respect.

7. However, the various so-called "reports" of the Gross Committee and the Disciplinary Committee do not give the slightest hint as to this. Nor have you and Dr. Protitch, in spite of many urgings since 10 October 1957, been willing to tell me what you maintain that I was authorized to promise the witnesses.

8. You, on the other hand, have been aware for nine months what I maintain that you authorized me to assure them, namely the following:

(1) Early in February 1957, Dr. Protitch informed me that, after several discussions with him, you had finally agreed that I could promise the witnesses that, while their names would be available upon request to the members of the Committee on Hungary, I would be the only person in the Secretariat who would know their names, unless, of course, the name in the individual case already had become known to others before the witness decided that he preferred to be anonymous.

(2) I had no cause to doubt that you had told Dr. Protitch to give me this instruction; there was, in fact, no reason why it was necessary for anybody else in the Secretariat to know the names of the witnesses; Dr. Protitch's statement to me was supported by the memorandum of 8 February from your Executive Assistant, Mr. Andrew Cordier, which stated that you had approved that I would "be responsible for maintaining a secret register showing the names of the witnesses."

(3) Mr. Cordier's memorandum of 8 February was followed by an additional one, and before it was issued several memoranda were exchanged inside the Secretariat, which, as I know, further will support my contention. During my only two "interviews" with the Gross Committee, I was assured that these memoranda would be produced. Today, six months later, they still have not been made available to me, although I can hardly believe that you -- or anybody else -- will maintain that they are not relevant to the case.

(4) Since it is claimed that I was not authorized to assure the witnesses that I would be the only person in the Secretariat who would know their name, thereby automatically becoming a kind of trustee for the secret list of the anonymous witnesses, I should appreciate learning how you explain the following:

(a) why, for eight months, from 8 February to 9 October 1957, neither you, Mr. Cordier, Dr. Protitch, Mr. Jordan or anybody else in the Secretariat ever asked me:

(i) to see the list of witnesses;

(ii) where and in what manner I kept and safeguarded this, perhaps the most secret document in the United Nations on the security of which human life depended;

(b) why I was not requested to hand over the list of witnesses to you, Dr. Protitch or Mr. Jordan for safe-keeping, at one of the following occasions:

(i) after the Committee on Hungary had adopted its report on 7 June 1957, and it was generally thought that the Committee thereby had concluded its functions;

(ii) before I left on a two months home-leave on 17 June, although the Report of the Committee was made public on that date, and one could well expect that questions might then be raised relating to the identity of the witnesses;

(iii) when shortly after my return from Denmark, on 26 August, I was told, without any explanation, that you and Mr. Cordier had agreed that I be dismissed as Deputy-Secretary of the Committee on Hungary, shortly before the General Assembly's Special Session on Hungary was about to meet;

(iv) when, on 19 September, one of your Under-Secretaries, in a memorandum to you, as I later discovered since it was included as evidence against me among the annexes of the final Gross "report," claimed that I had been "mentally ill," apparently since the end of May, and that he was "not at all sure that he is very far from a state of mind which could lead to physical violence, either to himself or others."

(5) Since 9 October 1957, when I was asked for the first time to hand over the list of witnesses to Dr. Protitch, I have several times inquired whether you personally deny that I was given the authorization, but no reply has been forthcoming. As to Dr. Protitch, the development in his contentions has been as follows:

(a) on 9 October, when he first asked for the list, he merely maintained that the promise I had been authorized to give the witnesses, -- i.e. that nobody else in the Secretariat would know their name -- as a matter of course, did not include the Secretary-General personally;

(b) on 10 October, he maintained that he could not remember the exact terms of the authority I had been given as to what I could promise the witnesses;

(c) for almost six weeks thereafter, I heard nothing about the matter and since you did not answer or even acknowledge my memorandum to you of 11 October, I took it for granted that you and Dr. Protitch, on second consideration, had realized that you actually had authorized me to give the assurances to the witnesses;

(d) on 19 November when Dr. Protitch, without giving any reasons, suddenly again demanded that I hand over the list to him, he still was not willing to deny outright that I had been authorized as I claimed, but he thought that it might have been a misunderstanding;

(e) nor did he deny it outright when he handed me his written instructions on 29 November to hand over the list to him, so that he could put it "under seal and in safe custody";

(f) the interim Gross "report" of 15 January 1958 states that high officials of the Secretariat, including apparently Dr. Protitch, had declared that I had not been authorized "to give assurances to witnesses that he would be the sole and personal custodian of papers holding clues to their identity." The Gross Committee was perfectly aware from its "interviews" with me that I had never claimed this; obviously this would have included a great number of papers in addition to the witness list.

(g) not until the 19th February 1958, when I received a copy of the final Gross "report" did I learn for the first time that Dr. Protitch now had denied outright that I was authorized as I claim.

9. It would, of course, be important for the preparation of my defense to know if Dr. Protitch actually has stated this in his testimony before the Gross Committee, and in that case what he claimed that I actually was authorized to promise. You, however, have denied me access to the testimony, although I have even informed you that some of the witnesses reportedly have not stated at all to the Gross Committee what the Committee maintains in its "report".

B. The binding nature of the assurances to the witnesses, irrespective of whether authorized or not

10. Even assuming that I had been given no authorization to give any promise to the witnesses as to the extent of their anonymity, you, as Secretary-General, as well as I, would still be bound legally as well as morally by the promises which actually I have given. As I pointed out in my memorandum to you of 22 November 1957:

"As I understand it, you and Dr. Protitch now maintain that you made no arrangement to provide who in the Secretariat should be allowed to know the names of the witnesses and that I was not entitled to promise that nobody in the Secretariat but I would know their names. To this I can first of all say, that I was informed at the time that the matter had been thoroughly discussed with and approved by you. At the present time it is not necessary to go into details with regard to this point -- unless you desire so -- since it is of no consequence for the legal reasons which prevent me from handing the list over to you.

Let us assume -- which I do not for a moment admit - that Dr. Protitch is right when he now says that I must have misunderstood what was agreed on. This does not change the fact that many witnesses have been promised that nobody in the Secretariat but I would know their names, that several witnesses made this a condition for testifying, that two of them for very definite reasons which they specified, made it a condition that you in particular would not know their names; there were also other witnesses who gave reasons for their lack of confidence in you and certain other members of the Secretariat.

To repeat: A promise was given to the witnesses on behalf of the United Nations by an officer of the Organization. There was no reason for the witnesses to doubt that he was authorized to do so. Whether he actually was authorized or not is of no legal consequence. In the circumstances, all lawyers, I should think, will agree that United Nations and I, legally, as well as morally, are bound by this promise, and that it cannot be modified without the consent of the witnesses themselves.

Dr. Protitch has not been able to show me how this legal situation can be circumvented. I trust that you will let me know if you can."

11. You did not even acknowledge receipt of this memorandum, let alone answer the above or other essential questions in it, before you suspended me, on 4 December, and had me taken out of the United Nations premises accompanied by two guards.

12. Nor have you yet, in spite of my urgings, and although a lawyer yourself, even as much as hinted why you believe that you and I are not bound by the promises which, as you have had confirmed from many sides, I actually have given the witnesses.

13. The three "reports" of the Gross Committee and that of the Disciplinary Committee do not even acknowledge the existence of this central question, let alone answer it.

14. May I respectfully submit that I am entitled to an answer, since you have preferred charges of "gross misconduct" against me for insubordination, although I had informed you that what you wanted me to do, I could not legally do, and you were still not willing to tell me why, in your view, I was not legally prevented from carrying out your instructions.

15. I asked you at that time and I repeat here again: How can it be insubordination to fail to do what one either physically or legally is unable to do?

16. An answer to my various questions of 22 November, was the more requisite, since on 11 October, I had informed you in writing, through Dr. Protitch that:

"Several of the witnesses inquired carefully in advance about how their name would be kept secret. As to the Secretariat, I could assure them that nobody but I would know their name. Two prominent members of the Hungarian Communist Party both asked whether they could be certain that Mr. Hammarskjöld would not learn their names. I feel free, if the Secretary-General should like to know, to reveal the reason they gave for making this a condition".

17. In all these months, you have shown no interest in learning the reasons given by these two witnesses.

18. I feel myself that the reasons they gave are not irrelevant to an evaluation of the charges against me; however, I have been reluctant to put them in writing without your authorization and you have given me no opportunity to inform you about this or other matters orally since, on 4 June, last year, I first brought the various serious irregularities to your attention.

C. The report submitted by the "International League for the Rights of Man"

19. On 8 April 1958, the "International League for the Rights of Man", which, as you know, is recognized by the United Nations as a non-governmental organization, submitted to the Disciplinary Committee a report prepared by a special committee, consisting of three lawyers, and approved by the Board of the League. "We trust", the forwarding letter from the League to the Secretary of the Committee stated, "that the views expressed will be taken into careful consideration".

20. However, no reference to the report of the International League for the Rights of Man is to be found in the list of documents contained in the "report" of the Disciplinary Committee of 5 June; nor is there any reference in the Committee's "report" to the arguments advanced by the League. This is another example of the incredible documentation before the Appeals Board and the Disciplinary Committee; it has, as you know, been established that the Secretary has placed papers before these two bodies which I have not seen, while he has not submitted to the Appeals Board all the documents he has received from me.

21. Citing the principles recognized by the Nuremberg trials, which as Secretary-General you presumably accept, the International League for the Rights of Man stated in its conclusions:

"Whenever there is a conflict between obedience or adherence to administrative rules or orders of superior officers and a moral responsibility to safeguard life or liberty the issue must be resolved in favor of the higher moral obligation. We are not unmindful of the judgment of the Nuremberg tribunals that a plea of obedience to higher orders is no necessary justification or excuse, since each official charged with performance of a duty must consider and weigh in the balance whether his obligation to his service entails a risk of loss of life or of liberty. Performance of official duties therefore is no justification for loss of life or liberty resulting from such performance. In the case of Mr. Bang-Jensen, assuming that he had no power to provide assurances of secrecy, but since in good faith he felt that the rules and regulations of the Special Committee were inadequate to secure the life or liberty of the persons mentioned, and that disclosure of the list of anonymous witnesses would imperil persons in Hungary, the higher morality would demand support of Mr. Bang-Jensen's actions even though in derogation of his assigned duties.

We urge, therefore, both on the ground of Mr. Bang-Jensen's moral responsibility to the anonymous witnesses, undertaken in good faith, and in the implied authority delegated to him in the exercise of his official duties, that his suspension should be forthwith lifted and he should be reinstated immediately to his position with no loss of salary."

22. May I respectfully submit that it is incumbent upon you as Secretary General personally to study the report of the International League for the Rights of Man and that propriety also demands that you answer the various questions I have asked above, and ~~then~~ consider my comments to your answers, several of which you have been owing me for eight months.

* * *

II. CHARGES REGARDING ALLEGED UNFOUNDED AND FALSE
ALLEGATIONS AS TO SABOTAGE AGAINST THE
SPECIAL COMMITTEE ON HUNGARY

A. General Comments

23. It is now more than a year since, in a memorandum of 4 June, I brought certain serious irregularities to the attention of you and Mr. Cordier. In a supplementary memorandum of 6 June, marked "For the eyes of the Secretary-General, only," I stated as follows:

"May I now touch upon another aspect, which is the deeper reason for this memorandum. Many diplomats will no doubt feel that this shows an extraordinary lack of sapience on my part, since we rarely are thankful, although we should be, to the person who has courage enough to bring unpleasant information to our attention. You probably know the story of King Gorm and Queen Thyra from Danish history. Mr. Jordan has told me several times during the last four months, that he was in fact acting in accordance with your instructions and has intimated that it, therefore, would be rather foolish of me to take the matter up with you. I have good reason to believe that he has made the same statement to others. Anyhow, the same assertion has been made by another person.

I wish to assure you that I am at your disposal beyond, but not contrary to, my duties as an officer of the United Nations to straighten out everything. My only condition, as I have several times told Mr. Jordan, is honesty. I have seen enough to know that people can do terrible things, and still have other admirable or attractive sides to their character. I am not excited, I am not angry, not indignant, I have no animus against anybody, I only feel sorry for those -- whoever they are -- who perhaps by some mistake, have placed themselves in a position from which they find it difficult to retrieve themselves."

24. One might well conclude from the following that Mr. Jordan was right, when he indicated that it would be rather foolish of me to take the matter up with you:

(a) you indicated in a short handwritten note on 7 June 1957 that you would like to discuss the matter with me; we still, however, have not had that conversation;

(b) although I sent you another memorandum on 11 June, indicating that the sabotage was continuing, you failed to have anyone look at the evidence I offered you, although you knew that I was leaving for Denmark on home-leave on 18 June;

(c) in reply to a memorandum I sent you before I left, you wrote to me in Denmark on 18 June, that you would like to discuss all matters with me upon my return;

(d) after my return on 16 August, I waited for that discussion but it never took place; instead on 26 August I was suddenly dismissed by you without explanation as Deputy-Secretary of the Committee on Hungary;

(e) when I brought to your attention new examples of sabotage which I had discovered after my return, one of your Under-Secretaries threatened me with disciplinary action and dismissal if I "continued," by which he apparently meant bringing new examples of sabotage to your attention; he called me repeatedly a vilifier and accused me of making "wild allegations," while at the same time he refused to look at the evidence I offered him. "It would be ridiculous to spend even five minutes to look at it," he told me;

(f) on 9 September, after the suppression of the cable about (deleted for security reasons, _____) had been brought to your attention, a "whitewash" was attempted by one of your Under-Secretaries;

(g) on 20 September, I furnished the same Under-Secretary, with three simple examples of the three main categories of sabotage, which I had selected as being easily verifiable without detailed investigation;

(h) these examples were called to your personal attention, but no investigation was undertaken and you did not even acknowledge my memorandum;

(i) in fact, I heard nothing more about the matter, until on 16 December the Gross Committee, which you had constituted in circumvention of the Staff Regulations and Rules, asked me a few general questions about my allegations at the end of the second and final meeting I had with that group;

(j) on 19 February 1958, when I received the final Gross "report", I learned that the Committee pretended to have undertaken an investigation of the irregularities I had drawn to your attention, and had accepted, without question, all kinds of transparent excuses and explanations, without asking me to comment on them;

(k) now, without having heard me or other witnesses or having awaited my reply, the Disciplinary Committee attempts an even more clumsy "whitewash"; solely on the basis of the final Gross "report" and its annexes which the Gross Committee has carefully selected out of a "foot-and-a-half pile of documents," with the suppression of the most important, the Disciplinary Committee declares:

"Mr. Bang-Jensen has made little attempt to substantiate these accusations and has not, in fact proved or come anywhere near proving any of them."

25. Leaving aside the question what has been proven or not, as a matter of order I might point out that actually it is not for me to prove that sabotage has been committed, but only that the evidence was serious enough to give me reason to bring it to your attention.

26. Even so, I am, of course, very seriously handicapped by the fact that by dismissing me as Deputy-Secretary of the Committee on Hungary, you have deprived me of access to the Committee files and papers, and that you have refused to make these and other documents available to me, including the transcript of the testimony on which the charges against me are based.

27. It seems somewhat difficult to understand how you can charge that I am making "unfounded" and "groundless" allegations, while you concurrently deprive me of the documents to substantiate my allegations.

28. Quite apart from this, it is questionable whether there is much point in supplying you with all the examples of sabotage, a task which would require several weeks, considering your failure to utilize the evidence which so far I have placed at your disposal. In these circumstances and considering what has happened, I am, in fact, reluctant to submit all my evidence until I have assurance that a proper investigation will be undertaken. Otherwise, one would risk that incriminating documents will disappear and witnesses will be influenced before the investigation begins. My detailed statement of 29 May 1958 about the irregular handling of my case will indicate that such a fear is not unwarranted considering that the Gross Committee has supported its charges against me with references to documents which have never existed and at the same time has suppressed the most important documents in the case.

29. Nor should I like needlessly to embarrass other staff members or bring them into difficulties, until I am assured that there will be a proper unbiased investigation. To illustrate: an unusually level-headed staff member, who was assigned to the Committee on Hungary, reported to me during the Committee's functions that

(deleted for security reasons)

30. When a proper investigation is undertaken, I shall, with his permission already offered me, provide the name of that staff member, but until that time I shall not risk exposing him to framed-up charges and a campaign of vilification to undermine credence in him, similar to the one to which I have been exposed.

31. Despite the above considerations, I shall in the following pages present you with a number of additional irregularities, while simultaneously calling your attention once more to some of the irregularities I have presented to you since last summer, but which, nevertheless, still have not been investigated; in some cases, the Gross Committee does not even pretend to have investigated them, while the Committee in other cases attempts by way of its "report" to cover them up under a confusion of untruthful statements and allegations.

B. Irregularities the Gross Committee does not maintain to have investigated

32. The Gross Committee, for example, does not even pretend that it has investigated the following irregularities:

(1) the inclusion, among the guards on day and night duty outside the offices of the Committee on Hungary in Geneva, of a Yugoslav who was reported to be -----

(2) the placing on the staff of the Committee in Geneva as a translator, a Soviet citizen who -----

(3) the lack of reaction, when I reported several times that my locked drawers and cabinets in my offices in the United Nations buildings in Geneva and New York had been opened and my papers searched; in fact, in one case, on 3 September 1957, documents which were missing in the afternoon at 3:00 p.m. reappeared the next morning, having been replaced during the night;

(4) nor was there, for that matter, any apparent reaction, when I reported to the Gross Committee that my Yale-locked desk-drawers in the Secretariat had been opened and my papers searched, between my suspension on 4 December and 13 December, when I was permitted, in the presence of the Secretary of the Gross Committee to open my drawers to take my personal check-book;

33. The Gross Committee unfortunately does not agree with you, who stated as late as 21 January 1958 in your press-conference: "I have no reason at all to question his honesty." For instance, with regard to the above and other examples, the Gross Committee alleges, without having asked me for details, that "serious doubt exists concerning the actual occurrence." The fact that the Gross Committee made no efforts to find out if they actually occurred, does not prevent the Committee from declaring:

"It has been pointed out to him in this as in the case of his other allegations (I should like to know, by whom, when and where?) that they are baseless and do an injustice to loyal and efficient colleagues in the Secretariat. His persistence in nonetheless repeating slander, so demonstrably groundless, raises serious question as to the rationality of his behaviour."

(Emphasis added.)

C. Unauthorized changes in the draft to the Report after
the various chapters had been adopted by
the Special Committee on Hungary

34. In my memorandum of 11 June 1957, I called to your and Mr. Cordier's attention that, although I was Deputy-Secretary, Mr. Jordan had prevented me from seeing the final draft, adopted by the Committee on Hungary on 7 June, of which at least ten copies were in existence, nor would he let me see the master copy. I informed you that I could not even obtain a copy of the Committee's report before I left for Denmark on 18 June, although the same day several hundred copies were released to the press.

35. When I returned on 16 August, Mr. Jordan without explanation refused me access to the files of the Committee and, on 26 August, I was informed that you, similarly without explanation, had dismissed me as Deputy-Secretary. Even so I succeeded in ascertaining, as I indicated in my memorandum to you on 27 August, that unauthorized deletions and additions had been made in the report after the various chapters had been adopted by the Committee.

36. As I pointed out to the Gross Committee, it should not be too difficult to compare the master-copy, in which changes are entered, with the records of the executive meetings of the Committee, which will indicate the changes the Committee has authorized, thus making it evident that many important alterations were unauthorized.

37. For some reason, both the Gross Committee and the Disciplinary Committee have preferred not to look at these documents; this, however, did not prevent the Gross Committee from stating in its "report":

"We find that Mr. Bang-Jensen's charges that unauthorized changes were made by the Secretariat in the draft report of the Committee on Hungary are without foundation and contrary to the facts. We find further that with respect to omissions from the report any innuendo sought to be created by him of improper motive on the part of members of the Secretariat is malicious and unwarranted." (Emphasis added)

The Gross Committee does not explain how it can "find" that something is "contrary to the facts" when it has not looked at the facts.

38. May I respectfully request, since you refuse to make these papers available to me, implying that these and similar documents are not relevant to the case, that you let some disinterested person go through and compare the drafts and the records of the Committee. Among several unauthorized changes readily discernible he will find the following few examples:

(a) half a page has been deleted which revealed, what otherwise has not become known, that a few days after he became Prime Minister on 4 November, Mr. Kadar initiated negotiations with leaders of the other parties to form a coalition government; however, after certain party leaders reluctantly had agreed to this, he had informed them that,

despite his own belief that a coalition government of the popular leaders was the only way to solve the country's problems, the Soviet Military High Command disapproved of such a government; on Mr. Kadar's suggestion, some of the party leaders had tried to see the Soviet Commander, but he had refused to see them;

(b) unauthorized changes have been made in the adopted draft to make it appear, contrary to the evidence before the Committee, that the majority of the deportees were soldiers;

(c) other unauthorized changes have been made to make it appear that there were only a few women among the deportees, not "several hundred," as the adopted draft correctly stated;

(d) unauthorized changes have been made to make it appear that the Committee doubts that any of the deportees were sent further into Soviet Russia than the border districts.

39. As to the unauthorized changes regarding the deportees, an unsuccessful attempt had been made at an earlier stage to insert the same incorrect changes.

D. Insertion of incorrect facts and suppression of essential facts in the drafts

40. The efforts to insert or leave incorrect facts and to omit essential facts from the drafts, which the Rapporteur and the other members of the Committee had little opportunity to discover, were many and the subject is somewhat complex. The question can only be dealt with here by some general remarks and a few examples.

41. To avoid misunderstanding, it should be stated at the outset that most of the more than 70 staff members, who served the Committee on Hungary, obviously are devoted, loyal and conscientious international civil servants. Some of them often worked into the early hours of the morning; there are, in particular, three staff members, without whose persistent and tireless efforts the Report of the Committee could not have been drafted, and the efforts of sabotage largely frustrated.

42. As to Mr. Jordan, I have in fairness to him pointed out to you from the beginning that, correctly or incorrectly, he maintained that he was acting under instructions. At times he appeared to be extremely unhappy and told me, for instance, in detail how he had had several heated discussions with Dr. Protitch, and twice had threatened to resign, as Secretary of the Committee on Hungary, unless his instructions regarding the preparation of the draft to the Committee's report were changed.

43. As he reported it, you first had directed that the Secretariat should leave the drafting completely to the Rapporteur; when Dr. Protitch had pointed out to you that the members of the Committee no doubt would protest against this, you had agreed that the Secretariat could prepare a first rough draft to the various chapters, but you had insisted that the Secretariat then should leave it to the Rapporteur and the members of the Committee to correct that draft.

44. I expressed several times to Mr. Jordan my disbelief that you could have issued such instructions, but he maintained that this was the case and that he was, in fact, going beyond your instructions when he had some of the drafts redrafted after consultation with the Rapporteur.

45. Whatever instructions Mr. Jordan had, it soon became obvious, that he carried them out in such a way that the report would be full of errors, many of such a nature that it would be easy to make it an object of ridicule for anyone who wanted to undermine confidence in its conclusions.

46. For instance, it was stated in an early draft that Imre Nagy was Prime Minister for the first time in 1946-47. I pointed out to Mr. Jordan that the Prime Minister at that time actually was Ferenc Nagy, who is living in exile in the United States, and according to the Kadar Government, is one of the persons abroad who instigated the revolution. After long argumentation, Mr. Jordan agreed to delete the incorrect sentence; a day later I found, however, that he had not done so. When I again took up the matter, he refused to make the deletion before the Rapporteur had seen the draft. However, after prolonged discussion, he promised that he would call the error to the Rapporteur's attention.

47. When the draft came back from the Rapporteur, the error had not been corrected. Mr. Jordan first claimed that he had pointed the error out to the Rapporteur; when I expressed doubt that he had done this since it had not been corrected, he admitted that he had not but declared as follows: "When the Rapporteur has approved a draft and it states that Imre Nagy was Prime-Minister in 1946, then as far as I am concerned, Imre Nagy was Prime-Minister in 1946."

48. It took several arguments the following days before the incorrect line was deleted. I told him that I would report this matter to you, since he forbade me to discuss the drafts with the Chairman and the Rapporteur. At this, as on other similar, occasions, he indicated that this would be rather foolish, since he was just carrying out your instructions.

49. As I have several times pointed out to you, the members of the Committee, themselves, had little practical possibility of finding these errors among the thousands of facts in the Report; they had to confine themselves to checking the more important facts on which the conclusions of the Report were based. In general, the members had to rely on the Secretariat; the Chairman, as the records show, several times stressed this during the meetings.

50. The material was so enormous that it was not possible either for any member of the Secretariat to master more than a part of the facts, and constant rechecking had to go on. There were 2,000 pages of oral testimony, and it proved that the English verbatim, which was based on the simultaneous interpretation of the testimony, often was inexact and had to be checked with the original testimony in Hungarian which existed only on tape-records. How could the members of the Committee, for instance, have found such errors if the Secretariat kept silent about them, as Mr. Jordan frequently did?

51. Besides the testimony, the available material filled a couple of walls from floor to ceiling in the offices of the Secretariat: laws and regulations, Hungarian newspapers, transcribed broadcasts, photostats of important documents, many memoranda about special problems, etc. How could the members of the Committee possibly have checked this material themselves and controlled more than the facts essential for the conclusions of the report? It will also be clear from this that the Committee had to trust that the Secretariat, as it could reasonably expect, would direct attention to it if important facts of interest to the Committee's investigation were found in the huge mass of material at the disposal of the Secretariat.

52. The Gross Committee states, untruthfully, that all the errors of facts and omissions I alleged to have found in the drafts have been investigated by the Chairman and the Rapporteur, who found them untrue. Apart from the just described difficulties, it would have been impossible for the Chairman and the Rapporteur to find them untrue, since, as the Gross Committee is well aware, they did not even know them, except that the Chairman had asked me to discuss one chapter with him in which he himself had found several errors.

53. The Gross "report" maintains the following:

"...at the end of May, 1957, the Chairman and the Rapporteur examined in detail Mr. Bang-Jensen's allegations that the draft report suffered from errors and omissions. They concluded that this allegation was without foundation, and that the errors and omissions listed by Mr. Bang-Jensen were unsubstantial and indeed that certain revisions he suggested were themselves erroneous." (Emphasis added)

54. In my request for documents of 9 April, I have, under item 65, asked to receive a copy of the document in which I am supposed to have listed the errors and omissions I had found in the draft to the report. You can hardly maintain that that document is not relevant. However, I still have not received it. This is not too surprising considering that I never prepared such a list.

55. Based on the false assertion that the Chairman and the Rapporteur had investigated the matter and found all my allegations untrue, the Gross Committee, without investigating the matter itself, declares that my allegations are not merely groundless but false and defamatory.

56. The Disciplinary Committee for its part observes:

"that it cannot be the function of the Disciplinary Committee to question the judgment of the Special Committee on Hungary on matters entrusted to it by the General Assembly or to re-open the handling by that Committee of the various items of evidence and information laid before it."

With reference to the draft to "Chapter II," (dealt with in paragraph 62 below) the Disciplinary Committee states:

"The Committee found no evidence that the draft was the subject of complaint in the Special Committee."

57. The Disciplinary Committee thus maintains that if a deception is successful and the victim does not realize himself that he has been deceived, then it follows from this that any allegation that the victim has been deceived is not merely untrue but entirely unfounded; consequently, there is nothing to investigate and the person who attempts to enlighten the deceived or report the matter to the proper authorities should be punished for his "slandorous allegations."

58. If you will furnish me with secretarial help and some of the drafts to the report, I can go on for hundreds of pages providing you with examples; here I shall limit myself to the following, some of which earlier have been called to attention, but have not been investigated:

(1) at the meeting on 1 November 1956, between the Soviet Ambassador and the Imre Nagy Cabinet, at the beginning of which Mr. Nagy informed the Ambassador about Hungary's declaration of neutrality and denunciation of the Warsaw Pact, it was Mr. Kadar, who first spoke up and strongly supported the two declarations; this fact, which the members of the Committee on Hungary obviously had accepted as true, was suppressed in the draft prepared by the Secretariat;

(2) the report, as drafted by the Secretariat, completely misrepresents Mr. Kadar's speech to the Soviet Ambassador on that occasion, and omits inter alia Mr. Kadar's statement that if Soviet Russia again intervened in Hungary, it would be the Soviet Army and the Soviet tanks which would be carrying out a counter-revolution, not, as alleged, the Hungarian people;

(3) the central point in the Committee's investigations was whether the intervention by Soviet military forces on 4 November took place upon the request of the legal Hungarian Government. While the report was being drafted, the Secretariat came in possession of the full text of an address by President Dobi of Hungary on 9 May 1957. Mr. Jordan, in spite of many arguments, refused to inform the members of the Committee that Mr. Dobi in this official address to the "Hungarian National Assembly" had admitted that:

"...Accompanied by a few of his faithful political friends he (Kadar) managed to get across to the Soviet troops and asked for their help, not for himself but for the Hungarian People's Democracy, for the Hungarian people. This is why there is a people's regime in Hungary and why it will also remain... On November 3, Janos Kadar asked for the help of Soviet troops and, on 4 November, as the constitutionally-appointed Premier of the country, began his wise and purposeful work..."

Thus Kadar's request for foreign troops took place prior to his appointment as Prime-Minister. A careful reading of President Dobi's speech also revealed that Mr. Dobi inadvertently had disclosed that the Presidential Council had not dismissed Mr. Imre Nagy as Prime-Minister and appointed Mr. Kadar as his successor, until Soviet troops actually had occupied the Parliament building where the Government's office are located:

"...the Soviet troops appeared. Imre Nagy, together with his friends, had already left for the Yugoslav Embassy. The counter-revolution in the Parliament Building was over...The guns were roaring in the town and I returned to my office. Together with the present members of the Presidential Council, we resumed our work. As it had become obvious that the activity of Imre Nagy and his government had endangered the state and social order of the Hungarian People's Republic, the Presidential Council of the Hungarian People's Republic on November 4 withdrew its confidence from the government of Imre Nagy and suspended the government. Following this, exercising its constitutional authority, it elected Janos Kadar, Premier, and Dr. Ferenc Munnich, Deputy Premier..."

Mr. Jordan after some arguments finally sent a copy of this long address to the members of the Committee together with many other papers during one of the last meetings of the Committee, but he maintained that the Secretariat was not obliged, nor permitted, to draw the particular passages in Mr. Dobi's address to the attention of the members.

The Gross Committee covers up the real issue in its "report" and maintains that it was just a matter of conflicting judgment whether a speech by Dobi should be included or not, and that, anyhow, "a footnote reference was inserted in another context in the Report."

The Gross Committee is careful not to quote that footnote, which has nothing to do with the issue; it merely states:

"Mr. Istvan Dobi, Chairman of the Praesidium of the Hungarian People's Republic, stated before the Hungarian National Assembly on 9 May 1957 that the Praesidium on 24 October elected Imre Nagy Prime-Minister".

(4) the report purports to give the text of a declaration which Mr. Istvan Bibó issued as his last act as Minister, but the following passage has been deleted:

"The conduct of the people in which the whole Hungarian people took part, without distinction of class or religion, was admirable. It was amazing to see how they were able to distinguish good from bad."

(5) the report purports to give the full text dictated by Prime-Minister Nagy on the morning of 4 November 1956 as his last governmental act before he had to flee from the Parliament building, which is the seat of the government. After the words

"...the imperialism of Moscow knows no bounds."

the following statement has been deleted:

"I say this as Prime-Minister and as a Communist. It is the revolution which has revealed to me the true will of the people. The Russian pressure exerted on us during the revolution, and the interventions which took place against my will, have enlightened me in full of the ultimate aim of Russian imperialism."

(6) the report also omits the last and most important part of Mr. Nagy's last governmental act, in which he declared that Madame Anna Kethly should be given all help since she was the only member of the Hungarian Government outside Hungary. This statement obviously was not without significance in relation to the efforts of Madame Kethly to be recognized by the General Assembly in some manner as the representative of Hungary.

59. To repeat: the above are nothing more than a few examples.

60. All the above errors and omissions and innumerable others were repeatedly pointed out to Mr. Jordan, who refused to correct them or bring them to the attention of the Rapporteur; in some cases he maintained that he had corrected them or promised that he would correct them, but failed to do so. I do not recall, by the way, that Mr. Jordan, who drafted no chapter himself, ever found any error of fact or omission in the drafts or ever was gratified when the other members of the staff found them in the hundreds.

61. The following will illustrate the manner in which Mr. Jordan, insisting that he was acting in accordance with his instructions, submitted drafts to the Committee he knew contained serious indisputable errors of facts, which it was unlikely that the members of the Committee would find by themselves considering the enormous amount of material.

62. In my memorandum of 20 September 1957, I called, amongst others, the following example to your personal attention under the heading:

"Insertion of Erroneous Facts into the Report"

My long memorandum of 31 May to Mr. Jordan, which is in the possession of Mr. Hammarskjöld, will give a general idea about the various ways this was carried out. The following, regarding Chapter II, might serve as an illustration of one of the ways:

Chapter II was to be a kind of condensation of the report, giving the main developments during the Hungarian uprising. The Rapporteur had told Mr. Jordan that he considered this chapter very important, since many readers might find it sufficient to read this; his own government, in fact, had planned to reprint Chapter II in a special pamphlet.

Mr. Jordan arranged by various excuses that not even a preliminary draft of Chapter II was prepared until a few days before the report was to be adopted. He then asked Mr. Duckworth-Barker, the Press Officer of the Committee, to do this. Mr. Duckworth-Barker had only been able to follow the hearings of the Committee sporadically on account of his other duties. Apart from this, no man could possibly master all the facts of the report. He should, of course, have had close cooperation from all members of the staff so that all helped to check the facts. Late one night, after Mr. Jordan had left, I was able to assist him a bit with some parts and call certain misunderstandings to his attention. I should like to stress that, considering the handicaps under which he worked, he was in fact doing amazingly well.

Mr. Jordan instructed his secretaries not to let me have a copy of Mr. Duckworth-Barker's final draft. I received one anyhow. I noticed that a number of factual errors, some quite serious, were contained in the draft. Mr. Duckworth-Barker asked me to do him the favour of dictating a memorandum about the errors instead of telling him orally so that he, with explanations and suggestions in writing, could make his corrections more quickly. I did so and went to lunch while the memorandum, which was addressed on the top to Mr. Duckworth-Barker, was being typed by a secretary. When I returned, I was told that just as the secretary was finished typing it, Mr. Jordan had come and taken the memorandum and the copies from her. I went to Mr. Jordan; he refused to give it back to me or to give it to Mr. Duckworth-Barker. He also refused to give any reasons. Nor was he willing to discuss the errors of facts.

Mr. Duckworth-Barker never received my memorandum nor has he, according to him, ever seen it. Mr. Jordan apparently corrected a couple of the most glaring errors I had pointed out in the memorandum; otherwise he ignored it. During the meeting of the Committee when the draft was being adopted, I told him that it was his duty, since he knew that the draft contained factual errors, to make reservations to the Committee, saying that the draft was still being checked for errors. He answered: "I would never think of it." When I raised the question again at the end of the meeting, his answer was: "The draft is now adopted, and it is thereby finished as far as I am concerned."

I suggest you ask Mr. Jordan to see my memorandum to Mr. Duckworth-Barker of 4 June."

63. The Gross "report" gives a completely misleading description of this incredible incident. Without studying my memorandum to Mr. Duckworth-Barker and without verification, the Gross Committee has unquestioningly accepted Mr. Jordan's explanation that my allegations of errors of fact in the draft to "Chapter II" were incorrect except for just a couple of "quite minor" points. Apparently it did not occur to the Gross Committee to ask why Mr. Jordan should intercept a memorandum to Mr. Duckworth-Barker in such an unusual manner, and why, as I understand, Mr. Duckworth-Barker still has not been allowed to see it.

64. This, my own memorandum, is listed among the papers which I requested on 9 April. Permit me to point out that it now has taken you and Mr. Cordier more than two months to decide whether this and other similar documents are relevant to the case.

65. May I respectfully request, since you apparently are not willing to make this document available to me, and since the Gross Committee and the Disciplinary Committee carefully have avoided inspecting it, that you have an unbiased person study it. This will provide a surprising demonstration of what Mr. Jordan considers "not erroneous," or errors of "quite minor" importance; for instance, the political composition of the last Imre Nagy Government was incorrectly reported in the draft.

* * *

66. One of your Under-Secretaries has asserted that since the Report of the Committee on Hungary was so well received, "even in Washington," this proves ipso facto that my allegations are false. It hardly could prove more than that the attempts at sabotage were not too successful.

67. That they largely were unsuccessful was due to the efforts of devoted staff members, the clumsiness of many of the attempts at sabotage -- and Mr. Jordan's apparent moral doubts -- which in many cases made him susceptible to persuasion or to warnings that his actions would be reported. Many of the most serious errors of fact and omissions in the drafts were therefore corrected, but others remained. On the day the Report was finally adopted by the Committee, Mr. Jordan told a colleague that it was not worth the paper it was written on and should be thrown in the East River.

68. Presumably you will arrange for a proper investigation of this whole matter. May I in this connection point out that I believe I can expect that I will be asked to comment on the various intricate excuses and explanations, which undoubtedly will be presented to the investigators, before the investigation is concluded. At least, I am entitled to know whether the examples I have given on this and earlier occasions will be found sufficient to show that I have not made "unfounded" allegations as charged against me.

69. If after proper investigation, the examples so far presented are not considered sufficient for this purpose, I shall supply you with more.

E. Other examples of irregularities

70. In conclusion, I should like to illustrate with just a couple of examples the way in which the Gross Committee attempted to "whitewash" some of the many serious irregularities in relation to the work of the Special Committee on Hungary.

71. My memorandum of 20 September 1957 stated as follows under the heading:

(1) "Suppression of witnesses"

"I gave certain details about this to Mr. Cordier during our conversation on 5 June and made reference to this kind of sabotage in my memorandum to the Secretary-General the next day. The following will serve as one example of many similar efforts:

It had been agreed that I should handle all matters regarding witnesses. During the first part of the Committee's hearings, the members felt uncertain whether any Hungarians had actually been deported to the USSR. Several witnesses could testify that they had themselves been prisoners on "deportation-trains" or had liberated prisoners from such trains, but there was no proof, that the trains had actually proceeded beyond the Russian border. The Chairman and the Rapporteur had told Mr. Jordan and me that they were extremely eager to hear any witness who could corroborate that deportations actually had taken place.

By accident, I learned that Mr. Jordan had received a letter giving details about a young Hungarian refugee, available as a witness in the United States, who actually had been deported to Soviet Russia, but had escaped. I further learned that Mr. Jordan had not informed the officers of the Committee about this. Nor had he informed me though I was supposed to handle all questions regarding witnesses.

Mr. Jordan first denied that he had received the information. He then said that it was not the business of the Secretariat to furnish witnesses to the Committee. Mr. Jordan refused to give the name of the witness to the Rapporteur, until the Rapporteur told him that he wanted to hear the witness.

Mr. Jordan did not at that time maintain that he was acting on the Secretary-General's order, but has done so in later similar cases."

72. The Rapporteur has stated in writing to the Gross Committee on 6 January 1958:

"It is true that we were worried in New York about deportations and that we sometimes failed to find a witness that we were satisfied had actually reached the Soviet Union. I cannot speak for the Chairman, but I certainly did tell Jordan that I was eager to hear such a witness...I do recall saying that I wanted to hear witnesses about deportations."

73. Mr. Jordan, in fact, does not deny that the Rapporteur has told him this; nor does he deny that he had received the communication about the deported witness and his willingness to testify; nor does he deny that he did not inform either the Rapporteur or me. His explanation for these failures, as stated by him to the Gross Committee in writing on 7 January 1958, is as follows:

"At the time it seemed to me more than doubtful whether it fell within the instructions of the Secretariat regarding the handling of matters relating to witnesses. Moreover, it was quite undesirable for the Secretariat to give the impression of stacking the evidence in any particular direction. It could only provoke suspicion on the part of the Committee."

74. This might, in effect, appear to some to be an admission of the allegation. Why should it provoke suspicion that the Secretariat transmitted this particular communication to the Committee, just as it had forwarded the other communications regarding witnesses?

75. To a rational mind it would rather appear that it would more likely provoke the suspicion that the Secretariat was "stacking the evidence" in a particular direction, when the Secretary suppressed one of the most important of these communications, regarding a witness he knew the Committee was eager to hear.

76. The Gross Committee, apparently, has different standards for what appears "rational." It concluded that my "charges of suppression of witnesses are without any foundation...and so demonstrably groundless" that it raises serious questions about "the rationality of his behaviour."

(2) Irregularities in Vienna

77. The Gross Committee purported that it had investigated carefully allegations I have made with regard to irregularities during the hearings of the Committee on Hungary in Vienna.

78. Since I have never told anybody what these irregularities were, it is, indeed, quite remarkable that the Gross Committee, nevertheless, is able to "investigate" them and conclude, without asking me even one question, that they are "utterly groundless."

79. A full description of the irregularities in Vienna would require many pages. Until the matter is under investigation, the following should suffice:

80. About 65 potential witnesses had volunteered to testify when the Committee arrived in Vienna on 22 March 1957. It was obvious that the Committee could hear only a part of these witnesses during its five days' stay in Vienna; on the insistence of the members of the Committee, Mr. Jordan promised, as the records of the Committee prove, that the Secrétariat would pre-interview and screen the witnesses, so that the limited time available in Vienna would not be wasted by repetitious or unimportant evidence. In spite of his promise to the Committee, Mr. Jordan ordered me not to pre-interview the witnesses, as, in fact, I had of necessity been doing increasingly since the beginning of the Committee's work in New York; he now claimed that this was contrary to your instructions and also asserted incorrectly that the Committee had promised the Austrian Government to hear only 8 witnesses in Vienna.

81. In a two-hour conversation, Mr. Jordan alternatively threatened me and, breaking down pitifully, appealed for my sympathy in view of the pressure he allegedly was under. Since I failed to convince him that he was obliged to carry out the Committee's instructions, I requested that he telephone your personal representative to the Committee, Dr. Protitch, who was then in London; he refused to do that, but after further long discussion he promised to inform the Chairman and the Rapporteur about the instructions he had given me in conflict with his own promises to the Committee. This, however, he did not do.

82. For the present I shall be content to state that the description the Gross Committee has given of what happened in Vienna is completely erroneous. Fortunately, I am in possession of two handwritten notes by Mr. Jordan and the Rapporteur which bear on the events in Vienna.

(3) Suppression of the cable regarding _ _ _

paragraphs 83 - 97 deleted for security reasons

paragraphs 83-97 deleted for security reasons

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98. The above examples, which can be supplemented, should illustrate sufficiently the nature of the "investigation" of the Gross Committee. The attached 27-page statement of 29 May, regarding the irregular handling of the case, which you have already received and which I consider of no less importance than the present one, further illuminates the scandalous way in which the Gross Committee proceeded and the scurrilous nature of its report.

III. PROTEST AGAINST THE FLAGRANT VIOLATIONS OF DUE PROCESS,
THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, AND
SAFEGUARDS PROVIDED BY THE STAFF REGULATIONS

99. By your communications of 6 and 11 June, I was informed that you intended to take disciplinary action against me, although I have not been given the opportunity under due process to reply to the serious charges against me for "grave misconduct," and although you were informed on 3 June of my appeal to the United Nations Tribunal against your refusal to give me access to the documents necessary for the preparation of an adequate answer to the charges.

100. In your memorandum of 11 June, you argue that you are justified by Staff Rule 111.3(g) which states: "The filing of an appeal with the Joint Appeals Board shall not have the effect of suspending action on an administrative decision."

101. In spite of the fact that I repeatedly have pointed out to you that you and the Disciplinary Committee under due process could not proceed after 19 April, when I took the initial step in my appeal, you have not given any reason why you did not agree with this, and you have never referred to that Staff Rule until now.

102. As a lawyer and considering the high standards of Swedish jurisprudence, you cannot be unaware that one thing is that provision is made, as it has to be, that an appeal does not automatically suspend an administrative decision; another thing is that an appeal in many cases, depending on the issue, will make it contrary to due process and illegal and improper to carry out an administrative decision while the appeal against it is pending.

103. I have already protested vigorously against your suddenly-announced intention on 6 June to go ahead, in spite of my appeal to the Tribunal, on the basis of a so-called "report" prepared in secret by the Disciplinary Committee; the Committee has neither heard me nor received any answer from me to the many serious charges which you have preferred against me; in fact, it took great care by devious means to leave me with the impression that the Committee had accepted my protest, and honoring normal principles of due process had agreed to rest the case while the question of the documents was being decided by the appeal. In your communication to me of 11 June you state:

"I have reviewed all the communications addressed to you by the Committee and can find no basis for such an impression on your part."

104. Unfortunately, you have apparently not reviewed, at the same time, the letters the Committee received from me, nor my memorandum of protest to the Disciplinary Committee, of 7 June, against its secret and illegal proceedings, although you personally received a copy. That memorandum makes further debate unnecessary; I have therefore attached a copy as Annex II to the present statement.

105. Apart from this, I refer to my detailed statement of 29 May, Annex I, regarding the persistent and steadily mounting gross irregularities in the handling of the case; the far from exhaustive list of 26 points in paragraph 12 of that statement is of particular interest.

106. May I respectfully draw to your attention that under Staff Rule 110 you are not empowered to take disciplinary action against a staff member until the case has been referred to and properly dealt with by the Disciplinary Committee. Any disciplinary action you might take against me based on the so-called "report" of the Disciplinary Committee would therefore be invalid.

107. The Disciplinary Committee has hardly even gone through the semblance of proceedings, let alone proper proceedings:

(1) the whole case has been irreparably prejudiced by the Gross Committee, established by you on 4 December 1957 in circumvention of the Staff Rules, which has usurped the advisory functions of the Disciplinary Committee and the Joint Appeals Board;

(2) you forwarded the final Gross "report," with its recommendation that I should be dismissed for "gross misconduct," to the Disciplinary Committee as the presentation of your case against me, thereby in fact advising the Disciplinary Committee what you wanted it to advise you;

(3) The case was not even properly referred to the Disciplinary Committee by a communication addressed to it;

(4) The Committee was not even convened by you to its first meeting, in accordance with Rule 110.5, but by a person who stepped forward from the panel of Chairman and happens to be the highest-ranking of Mr. Cordier's personal assistants;

(5) the Committee knew that you had refused me access to the documents necessary for my defense;

(6) the Committee had received a copy of my request for documents, including the testimony, to Mr. Cordier of 9 April, listing 87 items, and could assure itself that none of these by any stretch of the imagination could be said not to be relevant. When, precisely, was the Declaration of Human Rights amended so that the testimony against a man is no longer considered relevant to his case?

(7) the Committee also knew that many of these documents were not merely relevant but absolutely essential, not merely for my defense but for anybody who sincerely wanted to know the facts in the case (for instance, the documents referred to in this statement, paragraphs 8, 9, 12, 26, 38, 54, 64 and 96);

~~CONFIDENTIAL~~

(8) the Committee knew that, on 19 April, I had appealed your failure to make the testimony and documents available prior to the proceedings in the Disciplinary Committee, in accordance with due process and your explicit assurances;

(9) the Committee, did not begin its so-called proceedings until five days later, when it, in its own words, on 24 April, held "its first meeting in executive session" and "began consideration of the charges preferred against you;"

(10) the Committee later took care, as my annexed memorandum to it of 7 June clearly demonstrated, to make me believe that it was not proceeding but had accepted my protest and was resting the case in accordance with ordinary principles of due process;

(11) the Committee thereby made certain that it could not risk receiving an answer from me to the charges against me;

(12) the Committee thus submits its "report" to you without ever having heard me or having received any answer from me;

(13) the Committee, nevertheless, largely bases its conclusions on the assertion that, since I have not answered, it had to presume that the various contentions and allegations of the Administration are true;

(14) the Committee had papers before it, the contents of which still are unknown to me;

(15) the legal opinion strongly in my favour, submitted by the International League for the Rights of Man to the Disciplinary Committee through the Committee's Secretary, apparently never reached the members of the Committee;

(16) two of the three members of the Committee are personal assistants of Mr. Philippe de Seynes, who is one of the signers of the Gross "report;"

(17) one of the members had discussed the case in advance and had made shocking and prejudicial statements, as indicated in the end of my annexed memorandum of 7 June.

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108. Permit me again, as I did on 17 May, to suggest that you consult your Division of Human Rights if you should have any doubts as to the seriousness and the extent of the flagrant violations of my basic human rights.

109. May I also again call to your attention the statement which was made on your predecessor's behalf to the Fifth Committee of the General Assembly, on 17 November 1950; and which the United Nations Tribunal found reason to quote in its Judgment of 11 August 1952:

"(the spokesman for the Secretary-General) "left with the Committee the question whether the Assembly might not have other obligations to... staff members at least as compelling as legal obligations, especially in the unusual circumstance where the employer was in position of omnipotence; whether for the sake of the integrity of the United Nations, the Assembly could afford to assume the posture of a commercial corporation employing labour and standing on legality, or whether by the very fact of its great power, it did not likewise have a special responsibility to deal fairly and justly and in a stable manner with those who served it."

* *

110. Permit me to stress again that the present statement is not and cannot be construed to be my answer to the many serious false charges against me. That reply, I shall submit to you when, through my appeal to the United Nations Tribunal, I have received the testimony and the documents necessary for the preparation of my answer, -- to which you have denied me access contrary to your own assurances and to basic principles of due process.

14 June 1958